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STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 33  
 Title: Agricultural rights to land

FISCAL DETAIL

Agency Affected: Natural Resources  
 Program Category Affected: \_\_\_\_\_

Sponsor: Representative Shultz  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

BRU, Program or Subprogram(s) Affected:  
Land and Water Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Carol Wilson  
 Division: Commissioner's Office

Phone: 465-2400  
 Date: 1/18/85

Approved by Commissioner: Nathaniel Peterson  
 Agency: Natural Resources

Date: 1/18/85

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

AGRICULTURAL PATENT

The State of Alaska, Grantor, pursuant to AS 38.05.321, in consideration of \_\_\_\_\_, hereby grants and conveys to \_\_\_\_\_, grantee the surface estate in fee simple subject to the covenants and conditions set forth herein, in all that real property situated in the \_\_\_\_\_ recording district, State of Alaska, described as:

[Legal Description]

Provided that grantee, by acceptance hereof and by agreement with grantor, hereby expressly covenants to use the property for agricultural purposes only and to operate in accordance with a Farm Conservation Plan approved by grantor and further agrees that these covenants shall run with the land and shall be binding upon the grantee and all other persons and parties claiming through the grantee.

PROVIDED FURTHER, as a condition subsequent to this patent, that if the property is used for purposes other than agricultural purposes then the grantor may enter the property and terminate the estate conveyed herein.

AND PROVIDED FURTHER, Grantor, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all development rights inconsistent with the agricultural use of

the property, as well as 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.

(d) The conservation plan must include a map of the homestead showing

(1) the planned location of any clearing and breaking of ground;

(2) the location of windbreaks, homestead ponds, and other improvements.

(e) A homestead conservation plan may be modified upon request of the entryperson. A modification must be approved by the director of the division of agriculture.

(f) In deciding whether to approve or modify a homestead conservation plan, the director of the division of agriculture, after consulting with the local soil and water conservation district, shall review the plan for consistency with the substantive standards contained in the United States Department of Agriculture, Soil Conservation Service's Conservation Practices, Standards and Specifications for Alaska, January 1978. (Eff. 5/31/84, Reg. 90)

Authority: AS 38.05.020 AS 38.09.020  
AS 38.05.035 AS 38.09.110  
AS 38.09.010

Editor's Note: A copy of the publication mentioned in 11 AAC 67.155(f) is available for inspection at the offices of the division of agriculture.

ARTICLE 7.  
DISPOSAL OF  
AGRICULTURAL INTEREST

Section

- 160. Administration of 11 AAC 67.160-11 AAC 67.195
- 162. Title and interest conveyed
- 165. Actions for trespass, damages, and forfeiture
- 167. Agricultural preference right
- 170. Sale notice
- 172. Purchaser qualification
- 175. Qualifications for purchase by lottery
- 177. Farm conservation plan
- 180. Contents of farm conservation plan
- 182. Modification of farm conservation plan
- 185. Farm development plan
- 187. Construction of real property improvements
- 190. Retained interests in land

192. Sale, assignment, or sublease of agricultural interest

195. (Repealed)

11 AAC 67.160. ADMINISTRATION OF 11 AAC 67.160 - 11 AAC 67.195. The director shall carry out 11 AAC 67.160 - 11 AAC 67.195 in a manner which

(1) minimizes the diversion of agricultural land to other uses;

(2) minimizes the impairment of agricultural land for agricultural use and development; and

(3) enhances the economic operation of viable farm units. (Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900 AS 38.05.069  
AS 38.05.020 AS 38.05.321  
AS 38.05.050

11 AAC 67.162. TITLE AND INTEREST CONVEYED. (a) Under 11 AAC 67.160 - 11 AAC 67.195, the state will convey only that portion of the state's title which constitutes the agricultural interest in the tract conveyed. 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 set out in (b) of this section. All other interests in the property remain in the absolute ownership of the state as prescribed by AS 38.05.069 and 38.05.321, and may not be trespassed upon by the grantee. The conveyance includes the right to exclusive possession. The agricultural interest may be alienated, encumbered, and inherited and is subject to the provisions of 11 AAC 67.192. The agricultural interest may not be augmented except as provided in AS 38.05.069(c), and may not be diminished except in the case of a forfeiture under this chapter.

(b) A grantee of an agricultural interest conveyed under 11 AAC 67.160 - 11 AAC 67.195 must

(1) comply with the terms, conditions, and limitations attached to the conveyance;

(2) comply with applicable laws and regulations; and

(3) use the land only for

(A) the production of plants and animals useful to man, including, without limitation, forage and sod crops; grains and feed crops; fruits, trees, and vegetables; dairy animals and products; and livestock; all such production

must be consistent with the farm conservation plan, but without the right to construct fixed, permanent or immovable structures except as specified in (C) of this paragraph;

(B) the maintenance of the land conveyed in its existing natural or undeveloped state, unless otherwise required by a farm development plan;

(C) the construction of fixed, permanent, or immovable structures reasonably required for or related to agricultural production, including that farmstead normally required for yards, driveways, parking, barns, and other outbuildings, and similar uses, to the extent permitted by the director under sec. 187 of this chapter and authorized and depicted in the farm conservation plan;

(D) the subdivision, for agricultural purposes only, of the land under the farm conservation plan and the requirements of this chapter;

(E) the use of gravel reasonably required for agricultural production only on the parcel conveyed, as authorized and depicted in the farm conservation plan;

(F) removal and disposition of timber by sale, gift, or other means in order to bring agricultural land into production, as authorized and depicted in the farm conservation plan and in accordance with accepted principles of land management and conservation. (Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900	AS 38.05.050
AS 38.05.020	AS 38.05.069
AS 38.05.035	AS 38.05.321

**11 AAC 67.165. ACTIONS FOR TRESPASS, DAMAGES, AND FORFEITURE.** (a) Any development or use of an agricultural interest conveyed under secs. 160-195 of this chapter by a grantee which is inconsistent with or contrary to sec. 162(b) of this chapter is a violation of the terms of conveyance and constitutes, together and as separate legal matters

(1) a breach of a condition subsequent;

(2) a breach of covenant; and

(3) a breach in the form of a trespass upon the remaining interest of the state.

(b) In the event of a violation described in (a) of this section, the director shall give written notice of the violation by certified mail to the record owner of the land and to the holder of any recorded security interest in the land. The record owner has no more than six months from the receipt of the notice to correct the violation. If the record owner fails or refuses to correct the violation, the holder of a recorded security interest who has received notice under this subsection may correct the violation to the extent the holder is empowered to do so, through, as appropriate, the payment of money, the performance of an act, or contracting for the performance of an act. The holder of a recorded security interest shall act within six months after notice is received under this subsection, or within an additional period as the director may allow for good cause.

(c) If the violation is not corrected to the satisfaction of the director within the period of time allowed under (b) of this section, the director may bring an action for injunction to abate the trespass upon the remaining interest of the state and an action for damages for breach of covenant against the grantee, together with any other remedy authorized by law, except that the director shall waive exercise of the right of reentry and power of termination for breach of condition subsequent unless action is also taken under (d) of this section.

(d) If the violation is not corrected to the satisfaction of the director within the period of time allowed under (b) of this section, and the violation is of such extent or gravity as to result in prolonged or permanent damage to or impairment of the usefulness or productivity of the land for agricultural purposes, the director may, in addition to the actions and remedies authorized by (c) of this section, exercise the right of reentry and the power of termination for breach of a condition subsequent after written notice of that action or of other necessary proceedings to the record owner and the holder of any recorded security interest, which results in the forfeiture of the agricultural interest to the state. Before acting under this subsection, the director shall consult with the

local soil conservation subdistrict established by AS 41.10.130. Upon forfeiture of the agricultural interest, improvements and chattels upon the land must be removed by the prior owner within 60 days thereafter. Any improvements remaining after the end of 60 days become the property of the state. (Eff. 4/28/78, Reg. 66)

Authority: AS 38.04.900	AS 38.05.069
AS 38.05.020	AS 38.05.090
AS 38.05.035	AS 38.05.321
AS 38.05.050	

**11 AAC 67.167. AGRICULTURAL PREFERENCE RIGHT.** (a) All sales of the state's agricultural interest are subject to an agricultural preference right as provided in AS 38.05.069. In order to qualify for a preference right, an applicant must submit his application on a form supplied by the division during the period specified in the sale notice.

(b) A qualified applicant must be the owner or lessee and operator of a farm or land upon which he has been actively engaged in agricultural pursuits as defined in AS 38.05.069. In order to qualify, the applicant may be required to have not less than 50 percent of the potentially tillable land he owns or leases cleared or otherwise devoted to agricultural purposes of a nature recognized by the director as consistent with the climate and soil capabilities of the area in which the land is located. In addition, he must present with his application a development plan that demonstrates the need for additional agricultural land in order to create an economic unit.

(c) The award of an agricultural preference right will be based on the characteristics of the existing farm as an economic unit. Multiple ownership of a farm unit does not create a qualification for multiple preference rights.

(d) Only the agricultural interest as described in secs. 160-195 of this chapter will be conveyed in conjunction with a preference right award. Permission to construct real property improvements under sec. 187 of this chapter will be granted to a preference right holder whose base farm is leased land, but will be withheld from other preference right holders unless

(i) the preference right holder's base farm is

separated from the parcel purchased under secs. 160-195 of this chapter by a physical barrier that necessitates duplication of farm support buildings on the purchased parcel; however, the director may require the preference right holder to convey to the state development rights on the base farm on an acre-for-acre basis; or

(2) granting permission would enhance the economic operation of a viable farm unit or result in only minimal diversion of agricultural land to other uses; however, the director may require the preference right holder to submit additional economic and land use justification for the farmstead area applied for; the director may also grant less than five acres for a farmstead, withhold the right to construct residences, and require the preference right holder to convey to the state development rights on the base farm on an acre-for-acre basis. (Eff. 4/28/78, Reg. 66; am 5/13/79, Reg. 70)

Authority: AS 38.04.900	AS 38.05.050
AS 38.05.020	AS 38.05.069
AS 38.05.035	AS 38.05.321

**11 AAC 67.170. SALE NOTICE.** Before offering the state's agricultural interest for disposal, the division will publish a descriptive brochure containing

(1) the date, time and place of disposal;

(2) the period during which preference right applications will be accepted;

(3) a statement of terms and conditions of disposal, including the terms of payment and length of contract, the availability of homestead credits, veteran's preference, purchaser qualifications, contract performance requirements, and any other special conditions or limitations;

(4) for each parcel

(A) size;

(B) appraised value;

(C) interests to be conveyed;

(D) farm conservation plan requirements;

(E) farm development plan requirements, if any;



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

## HB 33 SECTIONAL ANALYSIS

SECTION 1. AS 38.05.059 is repealed and a new section added that establishes a fee simple conditional title for the purposes of transferring land to persons for agricultural uses.

- a) Allows only one tract of ag. land to be purchased by an individual in an eight year period.
- b) Provides that the use of the land classified as agricultural will be restricted. After a fee simple title is transferred, the commissioner reserves the right of reentry should the terms of the condition be breached. Also clarifies that the right of reentry does not affect the validity of a prior lien or security interest in the land.
- c) These provisions apply to lessees as well as purchasers of ag. property.
- d) Establishes that the commission may set as a condition of purchase or lease of agricultural land, the submission of a farm development plan that is based on economic feasibility and sound development principles.
- e) Fee simple conditional title may not be conveyed to a person who has not completed a farm development plan.
- f) Definition of agricultural purposes and the size of the tract that may be conveyed as fee simple conditional.

SECTION 2: AS 38. 05.321 (a) is repealed (see file for language)



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

## MEMORANDUM

January 23, 1985

TO: Representative Dick Shultz, Co-Chair  
House Resources Committee

FROM: Dave Stancliff, Professional Assistant *D.S.*

SUBJECT: Brief Synopsis for HB 33

HB 33 repeals and reenacts AS 38.05.059 to establish the type of title that is 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 address 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 one issued to Mr. John A. Baker, a copy of which is in each 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 presently constituted HB 33 provides that the title to be transferred will be a fee simply 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 financial problems. (See Bank of the North letter)

The remainder of HB 33 recognizes the existing practice of requiring that a development plan be entered into and completed, and provides a definition of the phrase "agricultural purposes".

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.

*Fegangl /fægəŋjaj/.* In old English law, a thief caught while escaping with the stolen goods in his possession.

*Fehmgerichte /féymgərikht/.* 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 /féynd/.* Fictitious; pretended; supposititious; simulated.

*Felgned accomplice.* A pretended right, who act with others in a crime, but only for plans and confederates.

*Felgned action.* An action, pretended right, who of action, for some action the words of false action, in which false. See also Felg.

*Felgned diseases.* Similar cases are generally —fear, shame, or th.

*Felgned issue.* A proceeding, by consent, jury without actur Felgned action.

**FELA.** Federal Empl

*Felagus /fələygəs/.* In er by oath; a sworn decennary for the who took the place of was murdered, the r er went to the fel parents or lord.

*Feld.* A field; in com

*Fele, feal.* L. Fr. Fait

*Fellow.* A co-worker; panion; one with w another in some leg; a college or corpora

*Fellow-heir.* A co-he lance.

*Fellow servant.* One the same master. S.W.2d 762, 764. mon pursuit, under who derive author same common sour general business, th or departments of i App.D.C. 21, 16 F. employed and paid duties are such as that negligence of c other in performanc the same common vants." See also E.

*Fellow servant rule.* generally abrogated and Federal Emplo: tion for damages br injured employee t negligence of anothe responsible for the and, thus reducing

*Felo de se /fələw d*

*Felon /fəlon/.* Person a felony (q.v.).

# BANK OF THE NORTH

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April 25, 1984

TO: State of Alaska  
House Finance Committee

Subject: CSHB 458 (Resources) (Now HB 33)

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.

April 25, 1984

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:

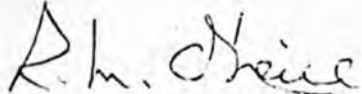
1. Who is responsible for clearing away any and all improvements that are not agriculturally related?
2. Who is responsible to find and qualify another grantee for the land? Who has approval authority - the State or the financial institution?

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



Robert M. O'Neill  
Vice President  
Branch Manager

RMO/dk



# 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

## M E M O R A N D U M

To: Bob O'Neill  
Bank of the North

From: John Manly *jm*  
House Resources Committee

Date: April 24, 1984

Re: CSHB 458 (Resources)

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As per our earlier conversation, I have formulated several questions pertinent to the Finance Committee's consideration of the above-referenced bill which we would appreciate having your advice on.

I have also included with this memorandum several pieces of relative information, including the current version of the bill itself, the present statute, and a typical patent, as issued by DNR under the present statute.

The questions we would anticipate from members of the Finance Committee are, in general:

- 1) Why won't the banks loan under the present conditions?
- 2) How does the proposed change solve the problem of security, as far as the banks are concerned?
- 3) In the event the State reenters the land, who would the bank expect to make good on the financial commitment entered into by the borrower to the bank?

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.

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.

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:

(3) "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.

NOTES TO DECISIONS

Quoted in *Gilman v. Martin*, Sup. Ct. (1983); *State v. Weidner*, Sup. Ct. Op. No. 2652 (File No. 5937), 662 P.2d 120 (1983); *LeResche v. Lustig*, Sup. Ct. Op. No. 2656 (File No. 6058), 663 P.2d 542 (1984); 2788 (File Nos. 6220, 6240, 6272), P.2d (1984).

*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 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 29 SLA 1982)*

**Sec. 38.05.060. Rejection of bids.** Before the signing of the formal conveyance by the director, the commissioner may reject all bids when the best interests of the state justify this action. Land offered at public sale but not sold may be made available at private sale for not less than its appraised value. (§ 2 art IV ch 169 SLA 1959; am § 9 ch 61 SLA 1960; am § 2 ch 137 SLA 1962)

NOTES TO DECISIONS

Cited in *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

*Sec. 38.05.063. Sales for pipeline purposes. [Repealed, § 31 ch 3 FSSLA 1973.]*

**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.

(c) The director shall, for contracts under (a) or (b) of this section, set out in the contract for each sale the period for the payment of install-

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