

**SB**

**167**

# FISCAL NOTE

**STATE OF ALASKA**  
**2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 167  
 ( ) Publish Date: \_\_\_\_\_  
 Dept. Affected: Natural Resources  
 BRU: Minerals, Land & Water Dev.  
 Component: Land Sales & Muni Ent.  
 Component Number: 2456

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: Agricultural Land  
 Sponsor: Sen. TORGERSON  
 Requester: S RES

**Expenditures/Revenues** (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2001) cost: None  
 Check this box if funding for this bill is included in the Governor's FY2002 budget proposal: [ ]

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact associated with implementation of this legislation.

Prepared by: Bob Loeffler Phone 269-8600  
 Division: Mining, Land and Water Date/Time 30-Mar-01  
 Approved by: Pat Pourchot Date 30-Mar-01  
 Agency: Natural Resources

For distribution information, call the Governor's Legislative Office

# ALASKA STATE LEGISLATURE



Senator John Torgerson, Chair  
Senator Druce Pearce, Vice Chair  
Senator Rick Halford  
Senator Pete Keliy  
Senator Robin Taylor  
Senator Kim Elton  
Senator Georgianna Lincoln

STATE CAPITOL, Room 427  
JUNEAU, AK 99801-1182  
Phone: (907) 465-4907  
FAX: (907) 465-4779

35477 Kenai Spur Hwy.  
Suite 101B  
Soldotna, Ak 99669  
Phone: (907) 260-3041  
Fax: (907) 260-3044

## SENATE RESOURCES COMMITTEE

### SPONSOR STATEMENT

#### SB 167

#### "Agricultural Land"

This legislation is intended to resolve a problem that dates back to the 1964 earthquake. In 1943, the Ross Miller family homesteaded twenty-seven acres of land in Hope. In the early 1950s, the Millers leased fifteen acres of adjoining land from the Forest Service, which they used for pasture. During the '64 earthquake, the Millers lost eighteen of their twenty-seven acre homestead. The earthquake exchange program compensated the Millers for their loss by giving them only one acre of land. Subsequently, the state determined that the Millers had been treated unfairly and were entitled to the fifteen acres of leased Forest Service land as relief. In 1978, agricultural rights to this land were conveyed as provided by former state law AS 38.05.321.

For many reasons, fee simple title should have been granted at this time. Recently, DNR has declared that the state has no compelling interest in retaining the remaining interest in this property and therefore, supports conveying full land rights. Unfortunately, there are no existing statutes that would authorize DNR to remove the agricultural restrictions on this land.

SB 167 would make a minor statutory change to correct this situation. Anyone who received agricultural rights to land under sec. 6(a) of the Alaska Statehood Act would be eligible for fee simple title if the owner pays the fair market value for the state's remaining interest. This would only apply to tracts that are 15 acres or less.

# STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING, LAND AND WATER

TONY KNOWLES, GOVERNOR

RESOURCE ASSESSMENT  
& DEVELOPMENT SECTION  
550 W. 7<sup>th</sup> Ave., Suite 1050  
Anchorage, AK 99501-3679  
PHONE: (907) 269-8634  
FAX: (907) 269-8915

March 5, 2001

Mrs. Linda Graham  
P.O. Box 11  
Hope, Alaska 99605

Re: Preference Right

Dear Mrs. Graham:

At our meeting on January 31, 2001, I agreed to confirm that the Department of Natural Resources supports conveying you and your brother full land rights to the parcel at Hope that was patented to your parents, William Ross Miller and Alma I. Miller. The parcel is 14.97 acres near hope, ASLS 78-174. It was conveyed on an "agricultural rights only" basis as provided by former state law AS 38.05.321.

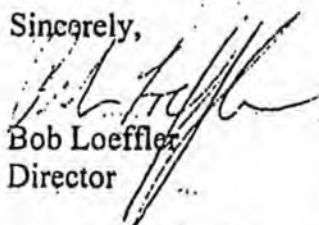
As we discussed at the meeting and in previous letters, your desire is to remove the agricultural restrictions so that you could subdivide the parcel among family members in the future. You further stated that the option of modifying the agricultural rights, as allowed for under the 1997 legislation that modified Alaska Statute 38.05.321, was not an acceptable approach. This was the approach described in my November 15, 2000 letter to you.

As I noted in the November 15 letter and we discussed at the meeting, existing state law does not give me the option of removing all agricultural restrictions and conveying full title to the land. As we discussed at the meeting, I also agree that the agricultural restrictions are not necessary and that I would support efforts to find a solution to this situation, provided it did not set a precedent that would apply to other agricultural parcels.

Keep in mind that any solution will require public notice, as this would be a disposal of the state's interest in the land. Public notice of any disposal of state land is required by Article VIII, Section 10 of the Alaska Constitution.

Please contact me or Dick Mylius of my staff if we can be of further assistance.

Sincerely,

  
Bob Loeffler  
Director

CC: Mr. Frank Miller, Box 83, Ninilchik, Alaska 99639  
Senator John Torgerson, Juneau (attn: Mary Jackson)

Representative Ken Lancaster  
Senator John Torgerson

3 March, 01

Dear Sirs:

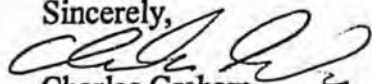
The Miller family of Hope and Ninilchick is requesting your assistance with a land title problem dating back to the '64 earthquake. With your assistance, perhaps we can resolve this problem once and for all.

The parcel in question is ASLS 78-174. It contains fifteen acres and is located on the East side of the community of Hope. Perhaps a word of background is in order. The adjoining parcel, USS 3922, was homesteaded by Mr. and Mrs. Wm. Ross Miller in 1943. In the early fifties, Mr. and Mrs. Miller leased the adjoining fifteen acres from the Forest Service. They constructed some small buildings on it and used it for pasture until the state selected this land after the earthquake. At the time of the earthquake, the Millers had the twenty seven acre homestead in Hope, (USS 3922,) and a six acre home and sawmill site in Homer. Both areas sank in the quake. In Hope, the Millers lost eighteen of their twenty seven acres, and in Homer, the entire home and mill site went under the tides. In total compensation for the loss of both properties, the Millers received one acre of land in the earthquake exchange program. The state subsequently determined that the Millers had been treated unfairly in the earthquake exchange program, and were entitled to relief, the fifteen acres being the relief. In 1978, the state transferred partial title to the fifteen acres to the Millers, agricultural rights only. This is the crux of the problem. For many reasons, clear title, fee simple title, should have been granted. It is clear title that we are seeking now.

The family sent a letter to Mr. Dick Mylius of the State DNR last fall, (enclosed,) requesting a meeting to discuss this problem. This meeting was subsequently held and attended by both Mr. Mylius and Mr. Bob Loeffler. At this meeting, Mr. Loeffler stated that the state had no compelling interest in retaining the remaining interest in this property and would be willing to transfer it, but could find no statute that would authorize this transfer. It was at this point that we decided to ask for your assistance.

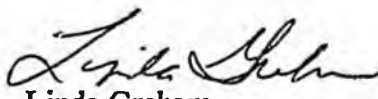
That the state recognized that an injustice was done, and that the state is willing to correct this injustice, but is unable to find a means to do so, seems incomprehensible. We are requesting your assistance in finding some means by which the state can correct this title and put this matter to rest. With your busy schedule and extensive responsibilities, we realize that you are burdened, but we would greatly appreciate it if some means could be found to fix this title once and for all.

Sincerely,



Charles Graham

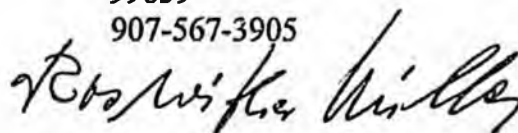
Box 11  
Hope, Alaska  
99605  
907-782-3371



Linda Graham  
Box 11  
Hope, Alaska  
99605  
907-782-3371



Frank Miller  
Box 39083  
Ninilchick, Alaska  
99639  
907-567-3905



Mr. Dick Mylius

7 December, 00

Chief of Resource Assessment and Development Section

DNR, Div. of Mining, Land, and Water

550 West Sixth

Anchorage, Alaska 99501

Dear Sir:

This letter is a response to your letter of 15 November regarding ASLA 78-174, located in Hope, Alaska. We appreciate your informative letter and your interest in this matter. However, modifying agricultural rights to this parcel is not a solution.

Clear title to this parcel should have been established, instead of ag rights only, when title to this parcel was created by the state. The Millers held a valid USFS lease to this parcel at the time of state selection, (disputed and later resolved,) and should have received a preference right to purchase this parcel under any circumstance. The law is clear on this point, and the granting of a preference right is no more than the Millers were entitled to. Viewing this on face value, the granting of an ag rights only title is perfectly understandable and reasonable. But this is not the whole story. The Millers were wiped out in the '64 earthquake, losing eighteen of their twenty seven acres in Hope, and losing a five acre home and mill site in Homer. In total compensation for these losses, the Millers received one acre of land along the Hope Road under the earthquake exchange program. After exhaustive investigation, the state concluded that the state erred in their treatment of the Millers, and that corrective action should be taken. The corrective action was that clear title should have been granted to the fifteen acres, (please see attached documentation.) Quite simply, the Millers were legally entitled to a preference right based on their USFS lease, and were additionally entitled to compensation for an "inequitable detriment" under the earthquake exchange program, both measures assured under Alaska statute. The conclusion of both the commissioner of the DNR and the Director of the DNR, was that the Millers should have received clear title to this fifteen acres, as did all the other people who received land under the earthquake

exchange program.

The handling of title to this small parcel of land is an injustice that has wounded and festered for nearly forty years. Other people received land under the exchange program, and other people received land under preference rights in reasonable time and without rejection or denial by the state. They got on with their lives as these laws were written to accomplish. For fourteen years, from 64 to 78, the Millers appealed to the state for equitable treatment on this land issue and were denied. In 78, new people took over the case and acted to resolve this problem. At the moment that this case should have been ended, fair and lawful resolution was again snatched away, and the Millers were told, "Ag rights only, take it or leave it." It would appear that this case has been handled not only unlawfully, but also with incredible cruelty.

In the following years, Mr. Miller passed away and Mrs. Miller deeded what rights she had to her three children. The problem is undiminished: the family is still unable to deal with this land as all other people who received land are able to. The reason is that the family still has not received the clear title to which they are morally and legally entitled. And again, after nearly forty years, the family is again forced into the distasteful position of seeking fair treatment, long denied.

In light of the gravity of this matter, we request an appointment to discuss it with you in person and at your convenience.

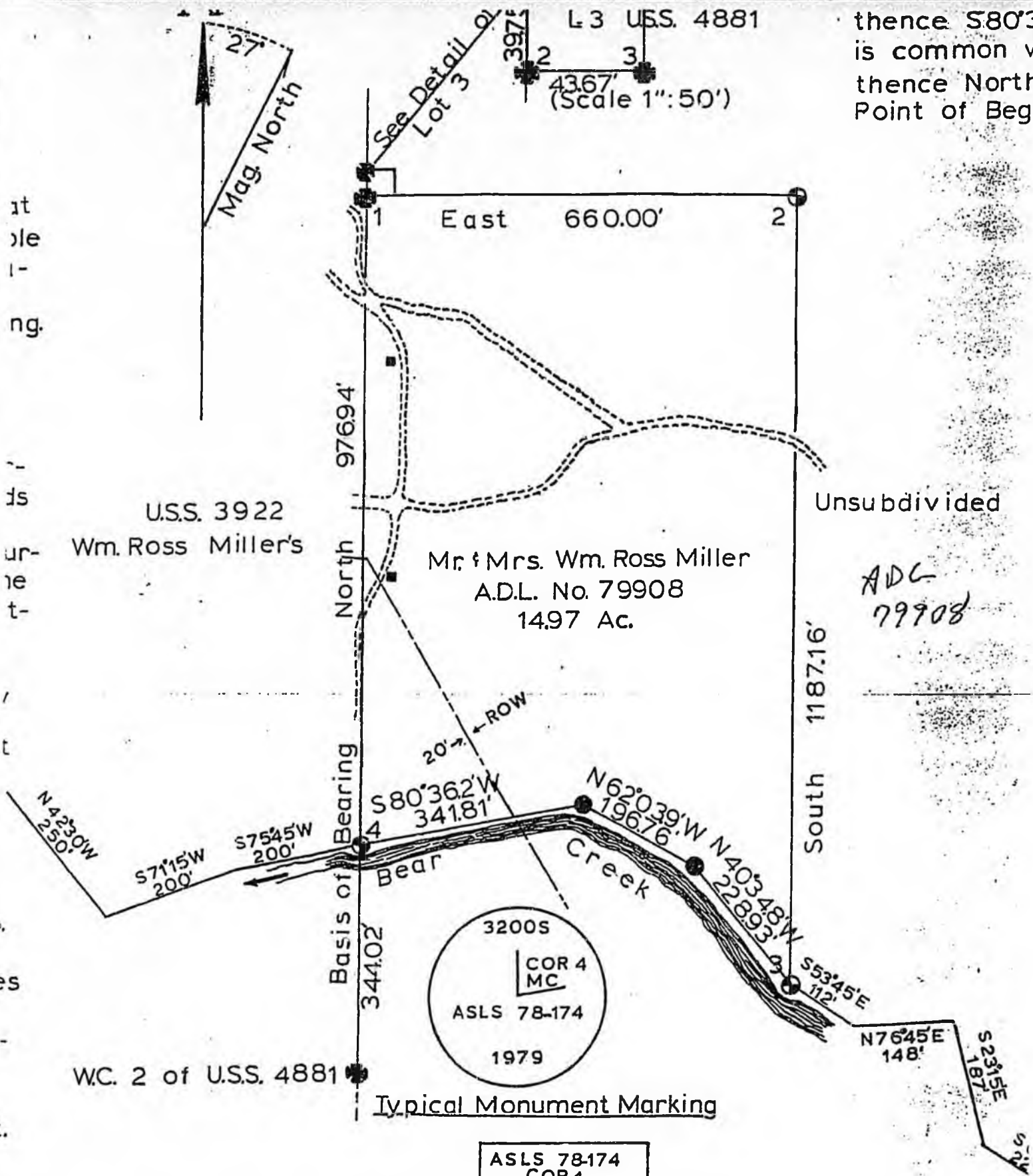
Sincerely,

Chuck Graham  
Box 11  
Hope, Alaska  
99605  
782-3371

Linda Graham  
Box 11  
Hope, Alaska  
99605  
782-3371

Frank Miller  
Box 83  
Ninilchick, Alaska  
99639  
567-3905

thence S80°3  
is common w  
thence North  
Point of Begi



Tree Data

S47°31'E	4.96'
N85°13'E	23.65'
N9°30'E	22.05'
N15°46'E	10.75'
S55°44'E	20.22'
S63°12'W	5.340'

Typical Bearing Tree Tag

LEGEND

- Existing BLM or C
- Primary Monument:

of ALASKA

**MEMORANDUM**

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT

TO:  WHOM IT MAY CONCERN

DATE: June 8, 1978

FILE NO:

TELEPHONE NO:

FROM: ROBERT E. LERESCHE  
Commissioner

SUBJECT: Preference Right  
ADL 79908

APPROVED

:  
:  
:

The findings in the attached memorandum have been reviewed. Case file ADL 79908 has been found to be complete. The Commissioner of the Department of Natural Resources hereby concurs with the Director of the Division of Lands in his granting of a preference right to Mr. <sup>W</sup>Ross ~~W~~ Miller under Alaska Statute AS 38.05.035(b)(2) as the result of errors and omissions on the part of the State in the handling of his earthquake exchange lands.

The Commissioner approves the Director's finding that Mr. <sup>W</sup>Ross ~~W~~ Miller is entitled to a preference right to purchase the 15 acres described in ADL 79908 at the fair market value of the land at the time of the earthquake exchange program.

*No mention of Ag Rts a/c*

ROBERT E. LERESCHE, Commissioner  
Department of Natural Resources

Date

Applicant's legal name is William Ross Miller. He prefers to be known as Ross Miller.

STATE  
of ALASKA

## MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT

TO:  THEODORE G. SMITH, Director  
Division of Land and Water Management

DATE: June 8, 1977

FILE NO:

THRU: RICHARD LefEBVRE, Chief, Lands & Water

THRU: L. A. DUTTON, District Mgr., SCDO TELEPHONE NO:

FROM: VINCENT McCLELLAND *June*  
Lands Project Officer

SUBJECT: ADL 79908  
✓ Ross ~~Miller~~  
Grant of Preference Right  
AS 38.05.035(b) (2)

On October 11, 1976 Mr. ~~Miller~~ Ross Miller applied to the Division of Land and Water Management for a preference right under AS 38.05.035(b) (5) and AS 38.05.068(a) to purchase state land adjacent to his homestead at Hope, Alaska, T10N R2W of the Seward Meridian.

On June 30, 1977 Mr. Vincent McClelland of the Southcentral District Office rejected the Millers's application finding that they did not qualify under the two statutes applied for. The Director of the Division of Land and Water Management, Theodore G. Smith, reviewed a protest to McClelland's denial and upheld the earlier determination. However, Mr. Smith instructed McClelland to research the matter further, contacting state officials involved with the earthquake exchange program in order to determine if an error or omission was made by the State in its treatment of the Millers at the time of the earthquake exchange.

We have reviewed the Millers's case files ADL 79908, preference right land sale; ADL 37523, land lease application, and ADL 36149, earthquake exchange file. We have contacted the state official handling the Millers's case at the time of the earthquake exchange program, have received and reviewed written testimony on the facts surrounding the treatment the Millers received at the time of the earthquake exchange program and have reviewed similar cases handled during the earthquake exchange program, and have found that the State made errors and omissions in the manner they handled the Millers's earthquake exchange transaction which resulted in an inequitable detriment over which the applicant had no control. These findings clearly indicate that the applicant, Mr. ~~Miller~~ Ross Miller, is entitled to relief pursuant to Alaska Statute AS 38.05.035(b) (2) and should be granted a preference right to purchase the applied-for property. The analysis that follows is in support of this conclusion. *No mention of AS Rts D. G. 66 7 Dec 6*

The Earthquake Exchange Act of Chapter 116 Laws of Alaska 1964, Section 4 states that the Director shall approve or disapprove applications for land, shall specify the land which shall be granted to eligible applicants, and "in making his designation he shall consider the value, size, and use of the land rendered unstable as a result of the earthquake of March 27, 1964, and shall as nearly as possible grant land of equal size or value, or of equal utility."

The Millers enjoyed a 27-acre homestead on which they cultivated crops and pastured goats. As a result of the earthquake, 20 acres were flooded and rendered unuseable. The State compensated the Millers for this loss by granting them approximately one acre in the Nu-Hope Subdivision. In view of the fact that the law intended to insure that victims of the 1964 earthquake could enjoy the same quality of life after the quake as they did prior to the quake and that this grant of land was not of equal size or value or equal utility, we feel an injustice to the Millers was caused through the errors and omissions of the State.

A review of the manner in which Keith and Vera Specking's earthquake exchange was handled emphasizes this point. The Speckings lost approximately 20 acres of land in the area adjacent to the Millers. This land was used to maintain and feed livestock, as was the land the Millers owned. In exchange for this land the Speckings received 15 acres along the southern boundaries of the Nu-Hope subdivision. We contacted Mr. Specking concerning this situation and he responded that, "In many respects the Millers's problem is very much akin to the one that I had at the time of the earthquake. . . I feel very positive that they are morally correct in their assertions, and I do hope that you are able to help them to resolve their problem and bring about equity."

We have found that the reason the Millers did not receive similar treatment as the Speckings was due to errors and omissions on the part of the State in their presentation of the program to the Millers and actions in implementing the Miller exchange. We offer the following points in support of this statement:

1. The Millers maintain that when state officials presented the earthquake exchange program to them they stated that the Millers would be required to quitclaim deed their entire homestead to the State, including lands which remained high and dry. This was unacceptable to the Millers for their buildings were still on useable land that had not subsided below the tides and they thought that they would be able to reclaim the other lands that had subsided. Apparently this determination was based on a memorandum from Attorney General Colver who opined on 8/19/65 that "Where the entire unit was rendered unusable because the use of a necessary segment was lost, the entire unit should be acquired by the State in the exchange. This would include the part not actually subjected to loss."

On October 14, 1965, Kenneth Hallback, Classification Officer, informed the Millers that "it appears that you do not wish to give up the lands rendered unuseable because you feel they may become useable some day. This precludes an exchange of lands under Chapter 116, SLA 1964."

2. On October 28, 1965, Hallback, after a visit from the Millers, wrote the Millers stating, "It was determined that it would be mutually beneficial if we jointly inspect the lands adjacent to your property at Hope (same land applied for here). It is hoped that we will be able to provide you with a parcel of land under the provisions of Chapter 116, SLA 1964, that will be agreeable to you."

3. On December 6, 1965 Mr. Leland Hornbeck, Classification Officer by memo to the files related that he met with Mr. Miller on November 29, 1965 and informed him that the 15 acres adjacent to his homestead (the land applied for here), would be up for sale at public auction in the near future if he did not trade his entire homestead for the 15 acres. "This would give Mr. Miller a chance to buy additional land adjacent to the land he is going to reclaim."

4. On August 22, 1966 Hallback informed the Millers that "we have established a policy of not requiring a quitclaim deed in the case of improved properties. Therefore, since it is your desire to reactivate your application, it will be reconsidered." He further suggested that acreage adjacent to their homestead would be available for an exchange informing the Millers, "it is possible that upon joint inspection of the area, we could make a preliminary assignment of a parcel mutually agreed upon and which would be redefined by actual survey on some future date."

5. When the State offered, in a June 14, 1967 letter, a one-acre lot in the Nu Hope subdivision in compensation for the 20 acres lost, the Millers assumed on the basis of what they had previously been told above, that this would only be a partial settlement because the State had stated at that time that they did not anticipate a survey of the applied-for property for some time.

We have contacted Kenneth Hallback questioning the circumstances surrounding the Millers situation; however, he could not remember the case. We have no reason to doubt that the Millers statement that they patiently waited the promised survey of this property or promised sale of the property "in the near future." Believing that these events would occur, the Millers didn't pursue the matter further until recently.

Clearly the Millers were not adequately compensated for the land the loss due to the quake as provided for in the earthquake exchange program. We believe that the State was in error not only in misrepresenting the program to begin with, but by misleading the Millers as demonstrated in the statements enumerated above.

We recommend that the Director and Commissioner grant the Millers a preference right pursuant to AS 38.05.035(b)(2) to purchase the 15 acres adjacent to their homestead at the fair market value of the land at the time of the earthquake exchange in order to correct the past errors and omissions of the State.

I concur:

\_\_\_\_\_  
THEODORE G. SMITH, Director  
Division of Land & Water Management

\_\_\_\_\_  
Date

GRANT OF PREFERENCE RIGHT

:  
:  
:

Having reviewed and considered the findings presented in Vincent McClellands memorandum of June 8, 1978 and the case file ADL 79908 the Director of the Division of Lands hereby finds that Mr. <sup>W</sup>Ross ~~ML~~ Miller is eligible for relief under Alaska Statute AS 38.05.035(b) (2) due to errors and omissions on the State's part in handling the Miller earthquake exchange under Chapter 116 Laws of Alaska 1964. Therefore, it is the Director's finding that it is in the State's best interests to grant Mr. <sup>W</sup>Ross ~~ML~~ Miller a preference right to purchase the 15 acres adjacent to his homestead within Section 28 and 27, T10N, R2W, S.M. pursuant to AS 38.05.035(b) (2).

\_\_\_\_\_  
MICHAEL C.T. SMITH, Director  
Division of Lands

\_\_\_\_\_  
Date

Applicant's legal name is William Ross Miller. He prefers to be known as Ross Miller.

DIVISION OF FOREST, LAND AND WATER MANAGEMENT  
LAND MANAGEMENT SECTION

TO: George Hollett

DATE: Sept 26, 1979

FROM: Richard A. LeFebvre  
Chief, Land Mgmt Section  
By: Judy Charles

SUBJECT: ADL # 79908  
Miller Pref. Right  
.068(a)

The subject file has been reviewed. The following comments - recommendations - alternatives are presented:

I agree, fee simple title should be conveyed rather than ag rights only. The surrounding lands will be transferred to the boro and a portion will remain in the Chucagh Nat'l Forest. Sixteen acres of lands in the middle of boro's forest lands with the ag rights conveyed would be useless to the state. Recommend amendment be made to director's 11/30/78 decision to reflect fee simple purchase rather than ag right. Also recommend utility classification.

P.D. is not ready for signature yet, however. No agency contact has been made nor have the lands been excluded from thorough selection (altho I think the latter would be a formality, as the Miller's have a prior right to the boro's selection).

NECESSARY ACTION:

Concurrence Subj. to above

Other \_\_\_\_\_

SECTION IX: RECOMMENDATION(S) (include whether action is in state's best interest)

OFFER LAND TO MILLERS FOR FREE SIMPLE INSTEAD OF AG RIGHTS ONLY, WITH THE EXCLUSION OF A 5 ACRE HOMESTEAD AND 11 ACRE PARCEL IS LEFT. THE PARCEL IS TOO SMALL TO BE CONSIDERED AN AGRICULTURAL UNIT. LAND IS SURROUNDED BY KENAI BOROUGH SELECTIONS.

SECTION X: SUMMARY BENEFIT ANALYSIS

- THE APPLICANTS PREFERENCE RIGHT FULFILLED - Agricultural pursuits may continue.
- Maintains low density rural atmosphere of Hope.

SECTION XI: SUMMARY IMPACT ANALYSIS

SECTION XII: OTHER RESOURCE CONSIDERATIONS

1. Surface:

- (a) Recreation N/A
- (b) Wildlife management N/A
- (c) Forest resources N/A
- (d) Water resources N/A
- (e) Other allows continued use of pasture

2. Subsurface:

- (a) Is mineral closing order required? ( ) Yes  No
- (b) Are there existing mineral permits or leases? ( ) Yes  No
- (c) Are there existing mining claims? ( ) Yes  No

SECTION XIII: RELATED CASES

1. Related or dependent ADL cases that should be processed concurrently or revised, and why:

ADL 201302 now being requested for relinquishment. This case can be related

SECTION XIV: OTHER

to the Millers in the Homer area listed under ADL 52812 and 202892. It is essentially the same situation however the Millers in Homer were closer to having an agricultural unit than the Millers in Hope. Free simple instead of Ag Rights was offered to the Millers in Homer.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

LAND AND WATER MANAGEMENT / 323 E. 4TH AVENUE - ANCHORAGE 99501

November 30, 1978

Mr. Ross W. Miller  
Hope, Alaska 99605

Re: ADL 79908

Dear Mr. Miller:

We are pleased to inform you that the Division of Lands has reviewed your pending preference right application and hereby grants you a preference right to purchase the agricultural interest rights in the 16 acres of land formerly held under permit from the United States Forest Service.

The preference right is granted under Alaska Statute AS 38.05.068(a). The Grant of Preference Right is enclosed for your review and information. As the area was formerly used as a goat pasture, the preference right granted specifies that only agricultural interests are to be conveyed. Before an agricultural patent may be issued for this land, a Farm Conservation Plan will have to be submitted and accepted by the local Conservation Subdistrict here in Anchorage and the Division of Forest, Land, and Water Management. You are entitled to develop five of the sixteen acres for your home, farm buildings and other out-buildings usually required for or related to agricultural production, and this five acre tract should be delineated from the remaining acreage. Plans for the remaining eleven acres including clearing work proposed, areas to be left in their natural state, proposed pasture land, etc., should also be a part of that plan. It should be noted that these plans can be changed at some point in the future, however, they will be subject to review by the local Soil Conservation Service Sub-district and must be approved by the State beforehand.

We will initiate necessary action to have this land classified "Agriculture" which will have to be accomplished prior to the negotiated sale of the parcel. Also, before we can negotiate a contract with you for the purchase of this land, the land must be surveyed. The Division of Lands can conduct this survey, however, our Cadastral Engineering Section would not be able to conduct the survey for a year. Should you desire to have this accomplished sooner than that, you should select a registered surveyor and have the surveyor contact Mr. Claud M. Hoffman, Chief, Cadastral Engineering, 703 West Northern Lights, Anchorage, Alaska 99503 for survey instructions. A survey allowance of \$350. will be allowed should you decide to have the property surveyed.

STATE  
of ALASKA  
DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF LAND AND WATER MANAGEMENT  
SOUTHCENTRAL DISTRICT

# MEMORANDUM

TO:  THEODORE G. SMITH, Director  
Division of Forest, Land, and Water Management

DATE: November 27, 1978

Thru: RICHARD A. LeFEBVRE, Chief  
Lands and Water

TELEPHONE NO.:

Thru: L.A. DUTTON  
District Manager

SUBJECT: W. Ross Miller  
ADL 79908 - Grant of  
Preference Right  
AS 38.05.068

From: VINCENT McCLELLAND  
Lands Project Officer and  
Virginia Ryder  
Special Projects

On October 11, 1976, Mr. W. Ross Miller applied to the Division of Land and Water Management for a preference right under AS 38.05.035(b)(5) and AS 38.05.068(a) to purchase State land adjacent to his homestead at Hope, Alaska, T10N, R2W, of the Seward Meridian.

On June 30, 1977 Mr. Vincent McClelland of the Southcentral District Office rejected the Miller's application finding that they did not qualify under the two statutes applied for. The Director of the Division of Land and Water Management, Theodore G. Smith, reviewed a protest to McClelland's denial and upheld the earlier determination. However, Mr. Smith instructed McClelland to research the matter further, contacting state officials involved with the earthquake exchange program in order to determine if an error or omission was made by the State in its treatment of the Millers at the time of the earthquake exchange.

On July 24, 1978 McClelland recommended to the Director and the Chief of the Lands and Water Section, Richard A. LeFebvre, to grant the Millers a preference right to purchase 15 acres adjacent to their homestead. The preference right was based on the premise that the State erred in the way they handled the Miller's earthquake exchange and relief would have been granted under AS 38.05.035(b)(2). The Director, Theodore G. Smith, did not feel this was the case and concurring with the Lands and Water Section's recommendation did not grant a preference right to the Millers.

At that meeting, Theodore G. Smith requested that research be made by the District Office to determine if the U.S. Forest Service erred in cancelling Miller's U.S.F.S. permit; and, if an error was committed by the Forest Service, a preference right could then be granted to Mr. Miller. This would include an appraised value as of the date that the lands would have been conveyed to the Miller's in 1966 when the 9 other Forest Service preference rights in the Hope area were appraised and conveyed to the then valid existing permittees.

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We have reviewed the Miller's U.S.F.S. Special Use Permit file and it is apparent that there was no legitimate reason for terminating the Special Use Permit. The U.S.F.S. terminated because the area was "in Hope state selection."

We feel they were in error due to the following facts:

1. There were improvements on the land.
2. The use of land was valid and existing. They were in compliance with the permit issued.
3. They were not delinquent on their payments for the SUP.

We maintain that the Forest Service erred in terminating the permit and recommend that the Miller's be granted a preference right to purchase the property pursuant to AS 38.05.068(a) at the then current fair market value of the land.

The following information is presented in support of this Grant of Preference Right:

4/13/65 - ADL #36149 contains a letter from U.S. Forest Service which states that NFCG-3 state selection was subject to certain valid existing rights including nine Special Use Permits. On the last page of this letter, the first page reads, "It is the intent of the Forest Service to close the Special Use Permit for a pasture issued to W.R. Miller on March 26, 1960. This will be done prior to patent of the selected area."

8/30/65 - Note in ADL #36149, Kenneth Hallback called Lyle Jack of the U.S. Forest Service who stated that they (the U.S.F.S.) would have cancelled the permit even without a state selection due to non-use of the goat pasture. Other related material - a copy of the Forest Service permittee's Sales Preference statute AS 38.05.068 which indicates that Mr. Miller's rights were under consideration for a U.S.F.S. preference sale by Mr. Hallback.

9/8/65 - Wm. Ross Miller clearly indicates that he is applying for the Special Use Permit lands lying adjacent to his homestead (10 acres) and that he did not want to give up any portion of his homestead under the earthquake exchange.

#### ADMINISTRATIVE ERROR

10/14/65 - From case file ADL #361490 letter from Ken Hallback to Wm. Ross Miller; last paragraph, "It also appears that you wish to obtain the land that you have under a permit from the Forest Service. At the time Mrs. Miller was in the office, the Forest Service Permittee Sales Preference Law was discussed. However, in order to qualify for a preference right under AS 38.05.068, the permit must be an existing permit at the time the lands are patented to the state. We have been advised that your Forest Service Permit will be terminated prior to the time of state patent. Should this be the case

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we will be unable to grant a preference right for a negotiated sale at Fair Market Value." (This portion of the letter indicates an administrative error under AS 38.05.035(b)(2) as the state did not follow up to be sure that the permit was closed.)

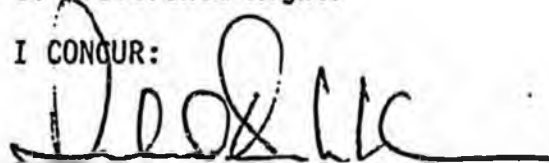
Summary: The Miller's Special Use Permit was not cancelled by the Forest Service until after tentative approval was granted to the state for Lot 1, USS 4881 on 7/22/66; Lot 1 USS 4881 was patented to the state 7/27/72. (Goat pasture is in Lot 1). The Miller permit was in effect and valid as of 7/22/66 and was not officially cancelled by the U.S.F.S. until 12/31/67. Therefore, the state erred in not considering the Millers for a U.S.F.S. Preference Right in 1966 as the permit was still valid and existing at the time of the State's tentative approval. The Forest Service erred in not notifying this office as well as the Millers, that the permit had been renewed until such time as the State of Alaska assumes ownership and the state having jurisdiction could then determine whether this use will be continued. (The Forest Service notified only the Millers; see U.S.F.S. permit file.)

In 1966 we negotiated sales with nine other valid existing permittees upon receipt of tentative approval only. Certain lands applied for by the Miller's had in 1966, and continue to have improvements located thereon up to the current date for approximately 5 acres of the 16 acre goat pasture. The Statehood Act, Section 6(g) clearly states that the rights of permittees, including the rights to the full use and enjoyment of the occupied land is protected.

In recognizing that an error was committed by the State we propose that a preference right to purchase this 16 acres be granted under AS 38.05.068(a). Due to the fact that the former permit held by Mr. Miller was for pasturing the Director has specified, in response to Virginia Ryder's memo of August 9, 1978, that only the agricultural interests in this land may be conveyed.

As supported above we recommend that the Director execute the attached grant of Preference Right.

I CONCUR:



RICHARD A. LEFEBVRE, Chief  
Land and Water Section

Nov. 28, 1978  
DATE

TO: TO WHOM IT MAY CONCERN

DATE: November 27, 1978

FILE NO:

TELEPHONE NO:

FROM: THEODORE G. SMITH, Director  
Division of Forest, Land, and Water Mgt.


SUBJECT: Grant of Preference Right  
ADL 79908

GRANT OF PREFERENCE RIGHT

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Having reviewed and considered the findings presented by Vincent McClelland's memorandum of November 27, 1978 and the case file ADL 79908 the Director of the Division of Forest, Land and Water Management hereby finds that Mr. W. Ross Miller is eligible for relief under Alaska Statute AS 38.05.068(a) due to the fact that the U.S. Forest Service was in error in terminating this permit and the State was in error in not protecting the Miller's rights to this land as they did the other Special Use Permits issued in Hope as it was a valid, existing interest in the land.

Therefore it is the Director's finding that it is in the State's best interest to grant Mr. Miller a preference right to purchase the agricultural interests in the 16 acres adjacent to his homestead, the same area formerly enjoyed under his USFS Special Use Permit, within Section 28, and 27, T10N, R2W, S.M. under Alaska Statute AS 38.05.068(a). The market value of the agricultural interests are to be established at a 1966 value.

  
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THEODORE G. SMITH, Director  
Division of Forest, Land, and Water Management

11/30/78  
\_\_\_\_\_  
DATE