

ALASKA LEGISLATURE COMMITTEE FILE 1985-1986 86/2

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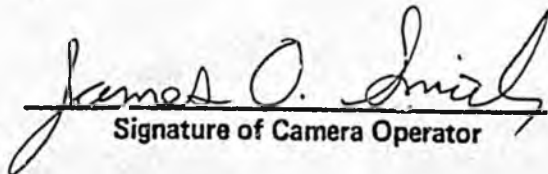
HCRA HB 36 - HB 39

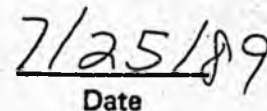


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Date

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STATE OF ALASKA
THE LEGISLATURE

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POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included
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Mary Van Nimwegen

HC+RA	3-25-85	3:00 P.M.
	1-21-85	3:07 P.M.

COMMITTEE REPORT
HOUSE

3/27

(7)

FURTHER: Finance

1/14/85

Date: _____

The Committee on Community and Regional Affairs has had HB 36

"An Act making a special appropriation for payment as a grant to the Matanuska-Susitna Borough to provide road access to Willow Creek and to provide parking, camping, and boat launch facilities; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note *Sup 36*
 Zero Fiscal Note Attached
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Phil Jones

W. Furness

MEMBERS HAVING
OTHER RECOMMENDATIONS:

F. Kayhalla *NO REC*

CRANE *N.L.*

Mr. ...

A. ... *DO NOT PASS*

Phil Jones

CHAIRMAN

Introduced: 1/14/85
Referred: Community & Regional Affairs
and Finance

Funding Information
General Fund \$2,600,000
Other Funds -0-
\$2,600,000

HB 86

1 IN THE HOUSE

BY LARSON AND HURLEY

2

HOUSE BILL NO. 36

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act making a special appropriation for payment as

7

a grant to the Matanuska-Susitna Borough to provide

8

road access to Willow Creek and to provide parking,

9

camping, and boat launch facilities; and providing

10

for an effective date."

11

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

12

* Section 1. The sum of \$2,600,000 is appropriated from the general

13

fund for payment as a grant to the Matanuska-Susitna Borough to provide

14

road access to Willow Creek, and to provide parking, camping, and boat

15

launch facilities.

16

* Sec. 2. The appropriation made by this Act shall be disbursed in

17

accordance with AS 37.05.315.

18

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-

19

10.070(c).

HB 36: ROAD AND FACILITIES ON WILLOW CREEK

Background Information:

Willow Creek is a major point of access for the Susitna River area fishery. In the past several years, the use of this stream to access the Deshka - Kroto Creek area, Lake Creek and other streams which are of high interest to sport fishermen has increased dramatically. For the past two years those people who use Willow Creek to launch their boats to get to the Susitna River and hence other destinations of interest, has increased to the point where travel on this stream between the Parks Highway and the Susitna River has become extremely hazardous. There have been several instances when boats traveling this section of Willow Creek have been forced to literally hit the bank to avoid a collision with another boat.

HB 36 asks for a special appropriation to allow the construction of a road to the confluence of Willow Creek and the Susitna River. Also it would provide for the construction of parking and camping facilities, as well as a boat launching area. This is a high priority project with the Matanuska - Susitna Borough. It will greatly alleviate the dangerous situation which now exists on Willow Creek in relation to the heavy boat traffic it is now receiving and it will help the tourist industry in the area. Also, as a side benefit, it may help reduce the pressure on the Kenai by providing a viable alternative to those fisheries.

the 100 foot ROW between Pittman Road and Lucille Road. It is a western extension of west Bogard. This particular project will provide for the PSE, ROW and utility location for 6.8 miles.

Wasilla Palmer Fishhooks Connector - PSE, ROW, and Utilities
(300,000)

This project would be the third and most northerly east-west road in the Borough with the other two being the Parks Highway and the Pittman Bogard Connector. Bogard Road to the south, Wasilla Fishhook Road to the northwest and the Palmer Fishhook to the northeast comprise a triangle which includes about 19 square miles. The connection between the two Fishhooks will be an east-west road that would open up the interior of this area, and would eventually be a middle link and a highway route that would run from Mile 52.4 of the Glenn Highway to Sack Road. It would not be expected to carry a very large traffic load compared to the other two east-west road systems; however, it is necessary to provide efficient circulation within the area. This project allows for the design work, the ROW acquisition and utility relocation for that project.

Willow Creek-Big Su Access, Phase II Construction
(2,329,400)

The sum of 600,000 was appropriated by the 1982 legislature to the Borough to construct a road from the Parks Highway to the mouth of Willow Creek. That money was used to design and construct the first 2.5 miles of road into the area. The last 1.8 miles cross much more difficult ground and is more costly to build than the first two miles. The amount requested for this project will complete construction of the road to the mouth of Willow Creek, provide for a six-lane boat launch area and parking. Future projects will request funding to pave the road and parking lot. This is a high priority project for the Borough as it is a major tourist attraction destination. This project will also help relieve the fishing pressure on the Kenai by providing more access to good fishing locations.

Local Service Roads and Bridge Upgrades (2,000,000)

This project requests funds to upgrade small local roads throughout the Borough. The emphasis on this project is to get the people "out of the mud". Bridge work is needed in several locations in order for our agricultural disposals to become successful. This money will be used on an areawide basis to cover those projects outside the local road service area capability to handle. This project will benefit numerous citizens in their day-to-day lives.



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James O. Smith
Signature of Camera Operator

7/25/89
Date

H B

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Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

HEARING DATE:

February 1, 1985

RE. HB 39

NAME (Please Print)	ADDRESS	REPRESENTING	TESTIFY (Yes or No)	PHONE NUMBER
LEO B. Rasmussen	Mayor of Box 2 Nome	CITY OF NOME	X	443-2798
MARILYN D. DIMMICK	Box 39310 NINILCHIK	KENAI BORO	-	567-3927
Carol W. Wilson	Juneau	Rep. District of Rasmussen	X	465-2111
George W. Carter	Box 709 Palmer	City of Palmer	no	745-2317
TED LEINE	410 CUSHMAN FKS	CITY OF FAIRBANKS	NO	452-6109
Heather Flynn	918 R St Anch	Anch Assembly	no	272-5392
Betty J. Gluck	Box 528	Kenai P. Boro	NO	283-7644
Dennis M. Coarty	320 Boulder # 329 K-7	Gateway Boro	NO	225-2408
Carol Mason	2526 Glenwood	Anch Assembly	NO	279-1123
Mike Wesley	Pouch B4, Juneau	C & R R	Resource info	465-4787
Bob Kern	" " "	"	"	"
Jim Smith	3002 Denard Rd #1	Anch - Muni	NO	276-4325
Dan Cece	Box 222	Sitka	YES	747-8908
Scott A. Burgess	Juneau	AMC	N.	586-1325

STATE OF ALASKA
THE LEGISLATURE

POUCHY - STATE CAPITOL
JUNEAU, ALASKA 99811
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May, 1988

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Mary Van Nimwegen

HC+RA 2-6-85 3:00PM.

ALASKA STATUTES TITLE 29, MUNICIPAL GOVERNMENT
CHAPTER 53, MUNICIPAL ASSESSMENT AND TAXATION:

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated to or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner shall be liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough. (sec 3 ch 229 SLA 1976)

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor with a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 percent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (sec 2 ch 118 SLA 1972; am sec 1 ch 90 SLA 1974; am sec 3 ch 229 SLA 1976; am sec 1 ch 66 SLA 1978)

FARM USE LAND ASSESSMENT
AS 29.53.035

Effective January 1, 1968, the first Farm and Agricultural Land Deferred Tax Program was enacted (ch 82 SLA 1967). Effective January 1, 1975, the act was substantially amended (sec 1 ch 90 SLA 1974). Effective January 1, 1977, the act was further amended (sec 3 ch 229 SLA 1976). And effective September 10, 1978, the filing deadline was moved to May 15 (sec 1 ch 66 SLA 1978).

The 1974 amendment reduced the yearly gross farm income requirement from 25% to 10%, provided for the averaging of income over a three year period, provided for estimated farm income for the current year, provided for the use of the lessee farm income to qualify the owner for farm use assessment, increased to seven years the deferred tax payment provision, and provided for reimbursement by the state of property tax revenue lost to the municipality through the operation of the act.

The 1976 amendment increased the penalty for conversion of the land to a use incompatible with farm use by requiring the owner to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years as though the land had not been assessed for farm use purposes.

The program was essentially inactive during the first four years of operation since agricultural and rural real estate, for a variety of reasons, simply was not assessed at as high a percentage of value as urban real estate.

The Farm Use Land Assessment Program requires a differential assessment for qualified farm land, with the owner's paying taxes on the land value as a farm, and the State's paying the taxes on the remaining value. If the land is converted to a use incompatible with farming, the owner is liable to pay the deferred tax for the preceding seven years.

Experience over the past several years has vividly demonstrated the difficulty of administering the existing legislation. The omission of a lien provision to make the eligible property liable for the payment to the state of an amount equal to the deferred taxes plus interest is a glaring weakness in the legislation which effectively negates the imposition of the penalty provisions.

Based on information provided to us from the following municipalities, Mat-Su, Kenai and Fairbanks, in our budget process we are projecting a shortage of \$400,000 for FY 86 in the Farm Use Program.

FARM USE LAND ASSESSMENT

FY 84 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	NUMBER OF APPLICANTS	NUMBER OF ACRES	FULL AND TRUE LAND VALUE	TOTAL DEFERRED VALUE	TOTAL DEFERRED TAX
ANCHORAGE, MUNICIPALITY OF	2	116.39	\$ 1,396,000	\$ 1,356,538	\$ 11,138.05
FAIRBANKS NORTH STAR BOROUGH	23	3,367.12	5,171,830	4,622,480	31,596.62
HAINES BOROUGH	1	14.09	90,600	49,000	281.58
KENAI PENINSULA BOROUGH	7	3,316.79	4,192,900	3,539,300	20,361.89
KODIAK ISLAND BOROUGH	3	406.54	1,231,845	985,477	3,695.49
MATANUSKA-SUSITNA BOROUGH	<u>75</u>	<u>11,938.96</u>	<u>17,244,860</u>	<u>15,560,240</u>	<u>133,952.12</u>
STATEWIDE TOTAL	121	19,159.89	\$29,328,035	\$26,113,035	\$201,025.75
AVERAGE PER APPLICANT	1	158.35	\$ 242,380	\$ 215,810	\$ 1,661.37
AVERAGE PER ACRE			\$ 1,531	\$ 1,363	\$ 10.49

Based on the above information and projected shortage, the deferred values would be \$65,000,000. The deferred value is the same as the value of the Agricultural Preservation Easement.

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ALASKA ADMINISTRATIVE CODE TITLE 19,
DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
CHAPTER 38, FARM OR AGRICULTURAL LANDS

19 AAC 38.010. FORMS. (a) The Department of Community and Regional Affairs Form 21-410 and Form 21-411 are adopted for use in application for the farm and agricultural land use assessment and tax deferment program.

(b) Application and authorization forms shall be made available by and shall be returned to the clerk or assessor of the municipality in which the land for which the farm use assessment and tax deferment are sought is located. (Eff. 12/31/75, Reg. 56)

19 AAC 38.020. INCOME VERIFICATION. (a) In addition to the application prescribed in 19 AAC 38.010, an applicant must establish before May 15th of the assessment year that the gross income attributed to farm use land is at least 10 percent of the applicant's yearly gross income, by either

(1) providing the clerk or assessor of the municipality proof of income eligibility as shown by income tax returns or other reasonably documented information which is determined by the local assessor to be sufficient proof of eligibility; or

(2) providing the department with copies of signed federal income tax returns submitted to the Internal Revenue Service for the previous year.

(b) Failure to provide documentation as required by this section forfeits the claim for reimbursement for that assessment year. (Eff. 11/24/82, Register 84)

19 AAC 38.030. APPEAL. An Applicant for the farm use assessment and tax deferment who believes that the valuation or classification assigned to the land that is the subject of the application is erroneous may appeal to the board of equalization of the municipality in which the land is located in the manner provided by AS 29.53.130. The municipality shall report the disposition of all such appeals to the state assessor. (Eff. 12/31/75, Reg. 56)

19 AAC 38.040. MAINTENANCE OF RECORDS DUPLICATE COPIES. The municipality in which the land is located shall maintain separate files and records of all applications for the farm use assessment and tax deferment, whether allowed by the municipality or not, including valuation of the property under the full and true value standard of AS 29.53.060. Duplicate copies of all records relating to the application entered in the file shall be forwarded to the state assessor. The municipality shall investigate to determine whether title to land for which the assessment and deferment have been granted has been conveyed or alienated in such a way that the assessment or deferment may be terminated and shall advise the state assessor as to the results of its investigation. (Eff. 12/31/75, Reg. 56)

19 AAC 38.050. CONFIDENTIALITY. Tax records and other documents providing evidence of the applicant's eligibility for the farm use assessment and tax deferment are confidential and shall be used only for the purpose of ascertaining whether the applicant is entitled to the benefits of the assessment and deferment. (Eff. 12/31/75, Reg. 56)

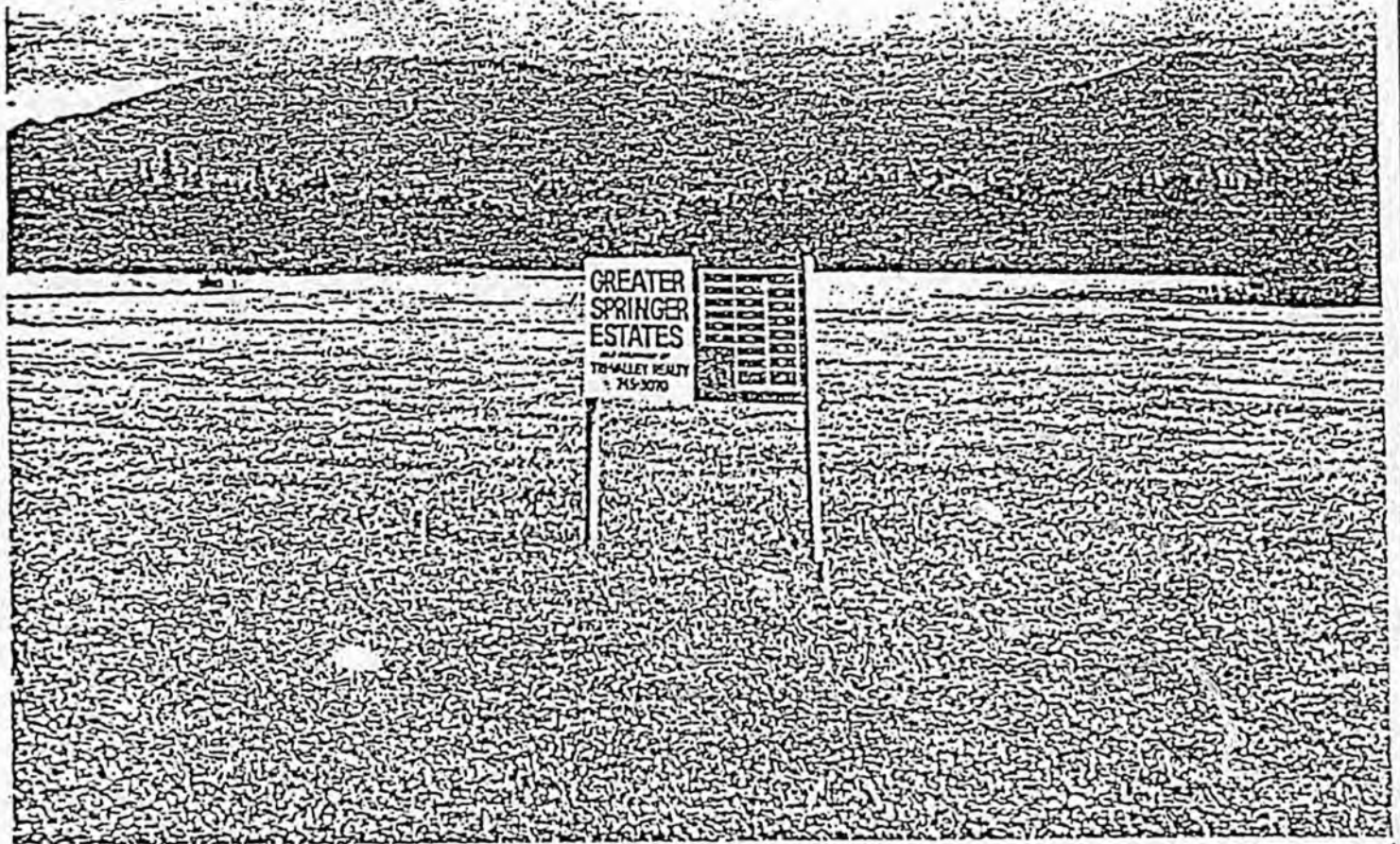
Revenues collected through FY 84, as a result of withdrawal from the program, are as follows:

\$ 5,691.38

Tax Deferred:

2

Number of Applicants:



Will Alaskan Farmers Sell ... the Development Rights to their Land?

By William G. Workman*, Edward L. Arcbio**,
and Anthony F. Gasbarro***

INTRODUCTION

In Alaska, as in many other parts of the country, market forces are producing a change in land-use patterns that is resulting in the conversion of highly productive agricultural lands to nonagricultural uses. Property on the urban fringes of Anchorage and Fairbanks that once produced vegetables and grains or supported dairy farms appears most vulnerable to this conversion to residential or industrial sites. Within the last three years

alone, for example, 27 farms have been subdivided in the Palmer-Butte area of the Matanuska Valley. Many of the subdivisions along the Parks Highway between Willow and Talkeetna are located on lands with high agricultural potential.

This displacement of farms by subdivisions, roads, shopping centers and other nonagricultural enterprises is viewed by some Alaskans as not being in the state's best interest. Those concerned about the loss of agricultural lands argue that the areas most likely to be converted represent some of the best agricultural lands in the state and are vital to the maintenance and further development of an agricultural economy in Alaska. In addition, it is suggested that the preservation of these areas will help to maintain a much-desired way of life and to provide needed open space and other environmental amenities at the urban fringe. These concerns have resulted in actions by the

* Associate Professor of Economics, Agricultural Experiment Station, Fairbanks.

** Research Associate in Economics, Agricultural Experiment Station, Fairbanks.

*** Forester, Agricultural Experiment Station, Fairbanks.



UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701
School of Agriculture and Land Resources Management
Agricultural Experiment Station

August 14, 1978

Dear _____

The Agricultural Experiment Station at the University of Alaska is conducting a survey of Alaskan farmers. This survey is part of a study concerning the future use of agricultural lands near population centers of Alaska. We need your assistance to make this study a success.

Agricultural lands are rapidly being converted to other uses such as residential lots, airports, and shopping centers. Land is becoming more expensive and some farmland owners are convinced that it makes more sense to develop agricultural land than to farm it. Other people are concerned that we are converting too much of the farmland near cities to nonagricultural uses and that it would be wise to preserve these lands so that food can be grown close to large population centers and so that there will continue to be open space near urban areas.

Many ways are being tried to preserve agricultural lands in other areas of the United States. Some of these include tax incentives, zoning and the trading of land. Another way is for a state or municipality to purchase from the farmland owner his right to develop his land for anything but farming. For a price, the farmer would give up his option to use his land for nonagricultural purposes; the land would still be his, but he could do nothing that would impair its agricultural potential.

The principal objective of our study is to determine (1) farmers' interest in selling development rights and (2) what it might cost the State of Alaska to purchase these rights. A short questionnaire is enclosed. We would be grateful if you will fill it out and return it to us in the enclosed postpaid envelope before September 1, 1978. All information will be kept confidential. If you desire we will be happy to send you a final report at the completion of the study.

Thank you for your cooperation,

William G. Workman

Dr. William G. Workman
Resource Economist

WG:Wks
Enclosures

A Division of the University of Alaska statewide system of higher education

Figure 1

state and municipal governments in Alaska to intervene in the land market to slow down or stop the loss of agricultural land. Methods employed include tax incentives (use-value assessment of farmland) and the sale of only the agricultural rights on state and municipal lands.

Recently, some state government officials have developed an interest in a new method of agricultural land preservation that is being adopted in some of the eastern states. This method involves the public purchase of nonagricultural development rights on agriculture lands currently held in the private sector. Usual development rights associated with a parcel of real property permit the landowner to develop his land beyond its current agricultural use, and because these rights can be separated from the total bundle of rights, they can be sold, thus transferring from the landowner the right to develop his land. This, then, is the concept behind the purchase of development rights as an agricultural land control device. In order that land remain in agriculture use in areas being converted to other uses, govern-

ALASKA AGRICULTURAL LANDS SURVEY

1. How many acres do you currently farm or ranch?
Your own land _____
Land rented or leased _____
From other landowners _____
From the government _____
Total acres _____

2. What crops or livestock do you produce?
Crops _____ Acres _____
Your own _____ Rented from _____ Leased from _____
others _____ government _____

Livestock	Number of Head	
	Your own	Rented from others
Vegetables or potatoes	_____	_____
Small grains	_____	_____
Hay or silage	_____	_____
Planted Pasture	_____	_____
Native Pasture	_____	_____
Livestock	_____	_____
Dairy cattle	_____	_____
Beef cattle	_____	_____
Sheep	_____	_____
	_____	_____

3. What do you estimate is the per acre market value of agricultural lands?
Your own land: Cleared _____ \$/acre Uncleared _____ \$/acre
That you rent (exclude government leases): Cleared _____ \$/acre

4. Would you be interested in selling development rights to your agricultural land?
Selling such rights would mean that your land could be used for agricultural or forestry purposes only.
Degree of interest _____ Cleared _____ Uncleared _____
Not interested _____
Slightly interested _____
Moderately interested _____
Highly interested _____

5. At what price would you sell the development rights to your agricultural lands?
_____ \$/acre

6. Please describe the location of your farm or ranch.
Nearest town _____ Distance from town _____
Direction from town _____
Thank you for your cooperation. A summary of the results of this survey will be available to you on request.

Figure 2

ments might purchase the development rights from agricultural lands. These lands could then be used only for agricultural purposes.

In June of 1978, the Agricultural Experiment Station at Fairbanks was asked by the Alaska Department of Natural Resources to evaluate such a program for Alaska. As a part of this assessment, a survey of Alaska farmers and ranchers was conducted primarily to determine their interest in such a program and to obtain estimates of the costs of purchasing these development rights. The results of this survey are reported here.

SURVEY RESULTS

During August of 1978, a questionnaire, with a brief explanation of the development rights concept in the cover letter (Figure 1 and 2), was mailed to 263 agricultural landowners in the most important farming or livestock areas of the state. Since there is no statewide, farmers' organization in Alaska, the names of landowners were obtained from the mailing lists of state and federal agencies that distribute agricultural information. Undoubtedly these lists did not include all of the people who consider themselves farmers. Of the questionnaires mailed, 18 were returned as undeliverable, leaving 245 that actually reached their destination, of which 112 (46%) were returned completed (Table 1).

Questionnaire recipients were asked to indicate their degree of interest in selling the development rights to their cleared and uncleared agricultural lands. Specifically they were asked to indicate whether they were highly, moderately, slightly, or not interested in selling these rights. Approximately 94%, 106 of 112 respondents, answered this question. The distribution of these expressions of interest can be seen in Table 2.

Most of the respondents in all regions except the Matanuska-Susitna area expressed little or no interest in selling develop-

Alaska State Legislature

REPRESENTATIVE
BARBARA LACHER
P.O. BOX 478
PALMER, ALASKA 99645
(907) 376-4215



WHILE IN JUNEAU
FOUCH V
JUNEAU, ALASKA 99811
(907) 465-4894

House of Representatives

MEMORANDUM

TO: HOUSE RESOURCES COMMITTEE
FROM: REPRESENTATIVE LACHER
SUBJECT: HB 148
DATE: April 9, 1983

Several questions were raised in regard to the intent of HB 148 in its first hearing in the House Resources Committee on March 30, 1983. I would like to take this time to address these issues in turn.

Concern was expressed as to the extent to which this bill effects areas of the state other than the Mat-Su valley. In other words, is this a Mat-Su bill? Agricultural lands are endangered throughout the state. Farmer's Loop Road in Fairbanks was mostly farms, and is now predominantly subdivided. A 160 acre dairy farm, also in Fairbanks, is subdivided and partially developed. The Bench area in Homer was originally all farmland, while today there are but a few small farm acres left due to subdivisions. Several farmers from the Bench area testified in the teleconference held on this bill in the C&RA Committee, earlier this session. The rate of subdivision is best documented for the Mat-Su area, where about 1,000 acres per year are being subdivided. The Department of Agriculture has not been keeping records for other regions of the state, but the absence of these records should not be interpreted as an indication that this is only a Mat-Su phenomena.

The \$77,000.00 fiscal note attached to this bill has been questioned for its reasonableness. On this note, Sharon Barton of the DNR testified, in the 3/30/83 hearing, that "...were HB 148 to pass it would not be a Department priority and that the funds provided in the bill would be spent for staff work on other priority projects." It should be pointed out that the legislative intent and direction of this bill is quite clear. The DNR should be reminded of the consequences of intentional failure to comply with legislative direction. The \$77,000 fiscal note, provided by the DNR, is quite reasonable. It is intended to cover the costs of administering the enabling legislation of HB 148. The administration of HB 148 will not require two full time staff positions. Most assessment valuations conducted under this program would be contracted to private assessors or use present state employee assessors.

These expenses would probably not total the \$77,000 provided in the fiscal note. HB 148 is enabling legislation and therefore the fiscal note does not provide funds for the acquisition of any agricultural preservation easements. These funds must be specifically designated and appropriated by the legislature.

HB 148 does not mandate that the DNR, Division of Agriculture purchase all property submitted for purchase by the program; nor does this legislation mandate that the Director or Commissioner purchase at any price. The State's liability in regard to questionable land valuations is guarded on two counts. First, the bill requires the use of an assessor (member of the organizations or a state employed assessor). Secondly there is no obligation stipulated in the bill that the Department purchase all submitted purchase applications.

Some members of this legislative body have raised questions as to the status of agriculture in Alaska and its overall value to the state as a whole. One could equally ask if Alaska is a forestry state, a fishing state, a trapping state, a mining state, a tourism state, and so on. The answer to all of these questions is an obvious yes. Alaska is a diverse state with multiuse lands and many growing and developing industries. The relevant question here is what does and will Alaskan agriculture do for Alaskans. Quite simply, farmland in Homer, Delta, Fairbanks, and Mat-Su is capable of providing employment and food for many thousands of Alaskans at a lower price than the same commodity shipped up from the lower 48.

The Workman, Arobio and Gasbarro report [An Examination of A Development Rights Purchase Program For Alaskan Agricultural Lands; January, 1979, DNR] noted that some small Alaskan farms are currently underproductive due to the impending threat of development. The report argued that these farmers were holding off from necessary investments into more productive equipment, etc., in the anticipation that they will be driven out of business and are therefore keeping their losses at a minimum. The effects of passage of HB 148 on this trend would be an obvious reversal. A second factor which has been a drawback for smaller Alaskan farms has been the absence of a well-developed transportation and marketing infrastructure. As the Workman, Arobio and Gasbarro report indicates, were state support of this industry given to the smaller produce, dairy and potatoe farmers then the inducement to develop this industry and the necessary infrastructure would follow within the private sector.

It is ironic that the state is currently spending millions of dollars to develop new agricultural lands while we're building subdivisions on existing farmlands that happen to be the best in the state. Most of these farms have been productive for years (see attached statistics); but the pressure of high prices offered by developers is causing a loss of these lands at the same historical moment that the state is investing in the clearing and development of new agricultural lands and grain terminals for the storage and export of the anticipated production.

An identical bill has been sponsored on the Senate side by Representative Moss; this is SB 237.

ferred to the commissioner" for "returned to the jurisdiction of the division of lands" and "Transportation and Public Facilities" for "Highways" and made a series of technical changes; and repealed former subsection (a), relating to the sale, lease, or other disposal of university land.

Legislative history reports. — For report on ch. 267, SLA 1976 (FCCS SCSHB 139), see 1976 Senate Journal, p. 1461.

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to deter-

mine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Scope of subsection (a). — Subsection (a) of this section only covers disposals of land by the commissioner of natural resources. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Creation of state park including university lands. — Since creation of a state park which included university lands was a disposal by the legislature, not by administrative action, subsection (a) of this section was inapplicable. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

By enacting AS 41.20.210 (now see AS 41.21.121), creating Chugach State Park, the legislature did not impliedly repeal subsection (a) of this section, which prevents disposal of university lands by the commissioner of natural resources without the approval of the Board of

Regents of the University of Alaska. AS 41.20.210 withdrew the particular university land involved from the operation of the management mechanism created by subsection (a) and AS 14.40.170(a)(4), which grants certain management powers to the Board of Regents. *State v. University of Alaska*, Sup. Ct. Op. No. 2303 (File No. 4579), 624 P.2d 807 (1981).

Construction of state lease provision reserving right to grant right-of-way.

— Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Sec. 38.05.032. School land disposition procedures. [Repealed, § 20 ch 182 SLA 1978.]

Sec. 38.05.035. Powers and duties of the director. (a) The director shall

(1) have general charge and supervision of the division and may exercise the powers specifically delegated to the director; may employ and fix the compensation of assistants and employees necessary for the operations of the division and is the certifying officer of the division, with the consent of the commissioner, and may approve vouchers for disbursements of money appropriated to the division;

(2) manage, inspect and control state land and improvements on it belonging to the state and under the jurisdiction of the division;

(3) execute laws, rules, regulations and orders adopted by the commissioner;

(4) prescribe application procedures and practices for the sale, lease or other disposition of available land, resources, property, or interest in them;

(5) prescribe fees or service charges, with the consent of the commissioner, for any public service rendered;

(6) under the conditions and limitations imposed by law and the commissioner, issue deeds, leases or other conveyances disposing of available land, resources, property or any interests in them;

(7) have jurisdiction over state land, except that land acquired by the Alaska World War II Veterans Board and the Agricultural Loan Board or the departments or agencies succeeding to their respective functions through foreclosure or default, to this end the director possesses the powers and, with the approval of the commissioner, shall perform the duties necessary to protect the state's rights and interest in state land, including the taking of all necessary action to protect and enforce the state's contractual or other property rights;

(8) *[Repealed, § 20 ch 182 SLA 1978.]*

(9) maintain such records as the commissioner considers necessary, administer oaths, and do all things incidental to the authority imposed; the following records and files shall be kept confidential upon request of the person supplying the information:

(A) the name of the person nominating or applying for the sale, lease, or other disposal of land by competitive bidding;

(B) before the announced time of opening, the names of the bidders and the amounts of the bids;

(C) all geological, geophysical and engineering data supplied, whether or not concerned with the extraction or development of natural resources;

(D) except as provided in AS 38.05.036, cost data and financial information submitted in support of applications, bonds, leases and similar items;

(E) applications for rights-of-way or easements;

(F) requests for information or applications by public agencies for land which is being considered for use for a public purpose;

(10) account for the fees, licenses, taxes or other money received in the administration of this chapter including the sale or leasing of land, identify their source, and promptly transmit them to the proper fiscal department after crediting them to the proper fund; receipts from land application filing fees and charges for copies of maps and records shall be deposited immediately in the general fund of the state by the director;

(11) select and employ or obtain at reasonable compensation cadastral, appraisal, or other professional personnel the director considers necessary for the proper operation of the division;

(12) be the certifying agent of the state to select, accept and secure by whatever action is necessary in the name of the state, by deed, sale,

gift, devise, judgment, operation of law, or other means any land, of whatever nature or interest, available to the state; and be the certifying agent of the state, to select, accept or secure by whatever action is necessary in the name of the state any land, or title or interest to land available, granted, or subject to being transferred to the state for any purpose;

(13) *[Repealed, § 15 ch 181 SLA 1978; § 20 ch 182 SLA 1978.]*

(14) *[Repealed, § 88 ch 152 SLA 1984.]*

(b) The director may

(1) delegate the administrative duties, functions or powers imposed upon the director to a responsible employee in the division;

(2) grant preference rights for the lease or purchase of state land without competitive bid in order to correct errors or omissions of a state or federal administrative agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control; the exercise of this discretionary power operates only to divest the state of its title to or interests in land and may be exercised only

(A) with the express approval of the commissioner; and

(B) if the application for the preference right is filed with the director within three years from

(i) the occurrence of the error or omission;

(ii) the date of acquisition by the state of the land; or

(iii) the date of a court decision or settlement nullifying a disposal of state land;

(3) grant a preference right to a claimant who shows bona fide improvement of state land or of federal land subsequently acquired by the state and who has in good faith sought to obtain title to the land but who, through error or omission of others occurring within the three years before (A) the application for the preference right, (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land, has been denied title to it; upon a showing satisfactory to the commissioner, the claimant may lease or purchase the land at the price set on the date of original entry on the land or, if a price was not set at that time at a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration including survey; the error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right;

(4) sell land by lottery for less than the appraised value when, in the judgment of the director, past scarcity of land suitable for private ownership in any particular area has resulted in unrealistic land values;

(5) when the director determines it is in the best interest of the state and will avoid injustice to a person or the heirs or devisees of a person, dispose of land, by direct negotiation to that person who presently uses and who used and made improvements to that land before January 3, 1959 or to the heirs or devisees of the person; the amount paid for the land shall be its fair market value on the date that the person first entered the land, as determined by the director; a parcel of land disposed of under this paragraph shall be of a size consistent with the person's prior use, but may not exceed five acres;

(6) dispose of an interest in land limited to use for agricultural purposes by lottery;

(7) convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable or a parcel of land created by a highway right-of-way alignment or realignment, or a parcel created by the vacation of a state-owned right-of-way, if

(A) the director determines that it is in the best interests of the state;

(B) the parcel does not exceed the minimum lot size under an applicable zoning code; and

(C) the director and the platting authority having land use planning jurisdiction agree that conveyance of the parcel to the adjoining landowner will result in boundaries that are convenient for the use of the land by the landowner and compatible with municipal land use plans;

(E) for good cause extend for up to 90 days the time for rental or installment payments by a lessee or purchaser of state land under this chapter if reasonable penalties and interest set by the director are paid;

(9) quitclaim land or an interest in land to the federal government on a determination that the land or the interest in land was wrongfully or erroneously conveyed by the federal government to the state.

(c) A parcel of land may be conveyed under (b) of this section without classification or reclassification under AS 38.05.300.

(d) A parcel of land described in (b) (7) of this section must be sold at its fair market value as determined by the director on the basis of an appraisal completed as provided in AS 38.05.840. Nothing in this subsection prevents the sale of land under AS 38.05.055 or 38.05.057 to a person not qualifying as an adjoining landowner if the adjoining landowner declines to purchase the land.

(e) Upon a written finding that the interests of the state will be best served, the director may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available land, resources, property or interests in them, and, in addition to the conditions and limitations imposed by law, may impose additional conditions or limitations in the contracts as the director determines, with the consent of the commissioner, will best serve the interests of the state. A contract for the sale, lease, or other disposal of available land or an interest in land is not legally binding on the state until the

commissioner approves the contract but if the appraised value is not greater than \$50,000 in the case of the sale of land or an interest in land, or \$5,000 in the case of the annual rental of land or interest in land, the director may execute the contract without the approval of the commissioner. Before a public hearing, if held, or in any case no less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them, the director shall make available to the public a written finding that sets out the facts and applicable law upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based. A written finding is not required before the approval of

- (1) a contract for a negotiated sale authorized under AS 38.05.115;
- (2) a lease of land for a shore fishery site under AS 38.05.082;
- (3) a permit or other authorization revocable by the commissioner;
- (4) a mineral claim located under AS 38.05.195;
- (5) a mineral lease issued under AS 38.05.205; or
- (6) a production license issued under AS 38.05.207.

(f) The director shall grant a preference right to the purchase or lease without competitive bid of up to five acres of state land to an individual who has erected a building on the land and used the land for bona fide business purposes for five or more years under a federal permit or without the need for a permit and, after selection by the state, under a state use permit or lease, if the business produced no less than 25 percent of the total income of the applicant for the five years preceding the application to purchase or lease the land. The director shall sell or lease the land at a price determined by the director to represent the current fair market value of the unimproved land but in no event less than the cost of administration including survey if required. If the director determines in a written finding that the purchase or lease of the land would interfere with public use by residents of the area, the director may condition the purchase or lease to mitigate the adverse effects on the public use or may reject the application for the preference right. A lease granted under this subsection may not be for a period in excess of 50 years. In this subsection, "business purposes" means a purpose permitted under the classification of the land at the time the land was entered. (§ 5 art II ch 169 SLA 1959; am § 1 ch 57 SLA 1960; am §§ 2 — 4 ch 61 SLA 1960; am § 1 ch 55 SLA 1962; am § 1 ch 56 SLA 1964; am § 1 ch 98 SLA 1964; am § 1 ch 5 SLA 1965; am § 1 ch 58 SLA 1965; am § 1 ch 194 SLA 1968; am § 1 ch 164 SLA 1972; am §§ 2, 3 ch 257 SLA 1976; am §§ 1, 2 ch 176 SLA 1978; am § 15 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am § 1 ch 61 SLA 1980; am §§ 9 — 13 ch 113 SLA 1981; am §§ 19, 20, 88 ch 152 SLA 1984)

Revisor's notes. — In 1981, in subsection (b) (7), the word "convey" was substituted for "dispose" at the beginning of the

paragraph and in subsection (d), the words "of land" were added following "parcel" under AS 01.05.031.

Effect of amendments. — The 1980 amendment added "except as provided in AS 38.05.036" at the beginning of subparagraph (a)(9)(D).

The 1981 amendment substituted "\$50,000" for "\$10,000" preceding "in the case of the sale of land," substituted "\$5,000" for "\$1,000" preceding "in the case of the annual rental of land," substituted semicolons for periods preceding "the written finding" and preceding "before a public hearing," added "a written finding is not required before the approval of" following "interest of the state" and added subparagraphs (A)-(C) in former subsection (a)(14). In subsection (b)(3), the amendment added "the price set on the date of original entry on the land or, if a price was not set at that time at" preceding "a price determined by the division." In subsection (b)(5), the amendment substituted "on the date that the person first entered the land" for "as of that date" preceding "as determined by the director." The amendment also added paragraphs (7) and (8) of subsection (b) and added subsections (c) and (d).

The 1984 amendment repealed former paragraph (14) of subsection (a), added subsection (e) to replace former paragraph (14) of subsection (a), and added subsection (f). The 1984 amendment also, in paragraph (2) of subsection (b), divided the language into introductory language and subparagraph (A), deleted "the past or future" following "correct" in the introductory language, added "and" at the end of subparagraph (A), and added subparagraph (B); in paragraph (3) of subsec-

tion (b), inserted "occurring within the three years before (A) the application for the preference right. (B) the date of acquisition by the state of the land, or (C) the date of a court decision or settlement nullifying a disposal of state land" and substituted "director" for "division"; in paragraph (4) of subsection (b), substituted "the judgment of the director" for "his judgment"; in paragraph (5) of subsection (b), substituted "the director" for "he" near the beginning of the paragraph; in paragraph (7) of subsection (b), inserted "for its fair market value a remnant of land that the director considers unmanageable or" in the introductory language and substituted "the director" for "he" in subparagraph (A); added paragraph (9) to subsection (b); and made a series of technical changes throughout subsection (b).

Opinions of attorney general. — The interaction of AS 38.05.030(b), 38.05.035(a)(7) and (12), AS 35.05.040(1), and AS 35.20.010 was examined to determine (1) which agency of the state had authority to accept title to land transferred by the federal government and (2) which agency had authority to manage the land, which was conveyed for airport and other purposes. The division of lands is the proper agency for acceptance of title. The division of aviation in the (former) Department of Public Works possesses the authority to manage the granted land for airport and directly related purposes while the division of lands possesses the authority to manage the land for other public purposes. April 14, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

The leasing of state lands is governed by regulations promulgated by the commissioner of the Department of Natural Resources, pursuant to AS 38.05.020(b)(1), and executed by the Director of the Division of Lands, pursuant to subsection (a)(3) of this section. *Swindle v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Construction of state lease provision reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, Division of Lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Transportation and Public Facilities. *Wessells v. State*, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Applied in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *Hoblit v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 2797 (File No. 7148), 678 P.2d 1337 (1984).

Quoted in *Alyeska Ski Corp. v. Holdsworth* Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Cited in *Hammond v. North Slope Borough*, Sup. Ct. Op. No. 2499 (File Nos. 5550, 5558), 645 P.2d 750 (1982); *State v. Bering Strait Regional Educ. Attendance Area School Dist.*, Sup. Ct. Op. No. 2625 (File No. 6381), 658 P.2d 784 (1983); *Chevron U.S.A., Inc. v. LeResche*, Sup. Ct. Op. No. 2659 (File Nos. 6396, 6648), 663 P.2d 923 (1983).

ATTACHMENT A
FARM USE LAND ASSESSMENT

FY 82 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	<u>NUMBER OF APPLICANTS</u>	<u>NUMBER OF ACRES</u>	<u>FULL AND TRUE LAND VALUE</u>	<u>TOTAL DEFERRED VALUE</u>	<u>TOTAL DEFERRED TAX</u>
ANCHORAGE, MUNICIPALITY OF	5	124.31	\$ 2,607,800	\$ 1,802,088	\$ 13,364.58
FAIRBANKS NORTH STAR BOROUGH	17	2,839.48	2,965,125	2,517,950	\$ 14,144.92
HAINES BOROUGH	1	14.09	54,250	40,650	\$ 234.72
KENAI PENINSULA BOROUGH	18	3,790.24	5,415,250	3,239,350	\$ 13,072.78
KODIAK ISLAND BOROUGH	2	324.44	107,079	85,662	\$ 471.13
MATANUSKA-SUSITNA BOROUGH	<u>72</u>	<u>12,104.43</u>	<u>18,503,840</u>	<u>12,909,740</u>	<u>\$100,961.28</u>
STATEWIDE TOTAL	115	19,196.99	\$29,653,344	\$20,595,440	\$142,249.31
AVERAGE PER APPLICANT	1	167.0	\$ 257,355	\$ 170,091	\$ 1,236.95
AVERAGE PER ACRE			\$ 1,544	\$ 1,073	\$ 7.41
SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE					
FISCAL YEAR 1976	91	18,759	9,279,400	6,140,300	77,805
FISCAL YEAR 1977	84	15,970	13,783,182	11,552,062	99,170
FISCAL YEAR 1978	86	15,467	13,807,490	11,373,877	118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249

Source: Alaska Taxable, Department of Community and Regional Affairs

ATTACHMENT B

AN EXAMINATION OF A DEVELOPMENT RIGHTS PURCHASE PROGRAM
FOR ALASKA AGRICULTURAL LANDS

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A report submitted to the Department of Natural Resources, State of
Alaska, in accordance with terms of research contract CC10 142.

January, 1979

SUMMARY AND CONCLUSIONS

The conversion of farmland to nonagricultural uses is progressing at a fast pace in Alaska as in other parts of the country. The purpose of this study was to examine the feasibility of the use of public purchase of development rights from agricultural landowners in the state as a means of slowing this trend. The framework for analysis called for an assessment of the potential benefits and costs of such a public policy designed to stall the market forces that are leading to these shifts in rural land use patterns.

Initially, the inquiry dealt with the question of why the patterns of resource use generated by the land market might be socially undesirable. The principal determination here was that some of the benefits that flow from the existence of agricultural land use are not captured by the farm or ranch operators. Rather they are external benefits which accrue to persons outside the agricultural sector and as such are not considered by the landowner in his decisions regarding land use. Since some of these benefits, such as open space and other environmental amenities, are also collective goods, a voluntary exchange market system provides no adequate mechanism by which those desiring these goods may register their preferences with the landowners. Thus, there may be a justification for social action to correct this market failure.

While conversion of agricultural land to residential and industrial uses is widespread in Alaska, the greatest shifts in land use patterns are taking place within commuting distance of the more densely populated areas around Fairbanks and Anchorage. This pattern is particularly

noticeable in the Matanuska Valley near the communities of Palmer and Wasilla. Understandably then, the greatest support for a public program to preserve these agricultural lands exists in this region. This support is reflected in a resolution, under consideration by the Matanuska-Susitna Borough Assembly, to compensate current farmers with land grants to forego the development of their lands.

Our examination of present and potential agricultural development in the state revealed that the economic contribution of the agricultural industry to the Alaska economy is currently quite small. In the local area of the Matanuska Valley, however, agriculture continues to represent a more significant portion of the economic base. Further, it was determined that a significant amount of potentially productive agricultural land exists in this area. Much of this land is held by the state and borough governments. The public sector, then, is in a position to determine future use of these lands through its land disposal programs. Recent sales in which only the agricultural rights were conveyed to the private sector illustrate the influence that government may have on land use patterns. These findings also suggest that the future of agriculture in the Matanuska Valley (as well as other parts of the state), and, hence, the availability of the other amenity values associated with this industry, may not depend on the lands currently in production. At issue, of course, is whether the least cost method of achieving the social benefits produced by an agricultural industry is to maintain the land currently in production or to use state and local government land disposal policy to achieve this end.

A review of development rights purchase programs in other parts of the country was instructive, although experiences with this public policy tool are too few and relatively untested for one to adequately evaluate their success. The one fact that stands out, however, is that the purchase of development rights on agricultural lands is a very expensive undertaking. Unlike the Alaska situation, the acquisition programs initiated elsewhere are aimed at preserving agricultural economies that are currently quite viable. Another important characteristic of these programs is that they are being used in areas where there are few opportunities for expansion of the existing agricultural activity.

A condition necessary for the success of a development rights purchase program is that it be acceptable to agricultural landholders. Our survey of farmers and ranchers in the state showed only a small amount of interest among these individuals on a state-wide level. Most of the interest expressed was concentrated among those landholders in the Matanuska and Susitna Valleys. The survey results also provided information regarding the potential purchase price of development rights. This information again showed a development rights purchase program to be a costly proposition.

Information regarding the size of agricultural firms in Alaska shows that in many cases the scale of operation is inadequate to take advantage of size economies. One thing that a development rights buy-back program might accomplish would be to allow the expansion of individual operations through the availability of lower priced agricultural land. Related to this, the buy-back method might be useful for acquiring

the development rights to existing non-agricultural "inholdings" within areas of agricultural activity in the state. The acquisition of development rights to these isolated inholdings could reduce the risk of having a land use develop which was incompatible with agriculture. At the same time, the use of the program in this context could facilitate the application of large-scale agricultural operations in farming areas.

Public acquisition of development rights is only one of a number of tools available for use in attempting to preserve agricultural lands. The main advantages of such a program have to do with the equitable treatment of farmland owners and the opportunity provided for long term maintenance of agricultural activities. These advantages must be balanced, of course, against the high relative cost of this approach.

As stated before, the primary benefit attributable to the preservation of private agricultural land in the state appears to be the open space and related environmental amenity values associated with this land. This is particularly the case when applied to maintaining certain scenic areas around communities or along highways. These benefits, by themselves, may justify some extra-market control of the conversion of agricultural lands to other uses in some critical areas. In Alaska these concerns are naturally most important in the urbanized areas, particularly in locations within commuting distance of Anchorage. The critical questions here, of course, are how much are Alaskans willing to compensate landowners, through the purchase of development rights, to forego the option of converting their land, and how are these costs to be distributed among the state's residents.

- Section
- 110. Notice of proposed exchange
- 120. Public hearings
- 130. Report on proposed exchange
- 140. Legislative review

- Section
- 150. Execution of exchange
- 160. Regulations
- 170. Definitions

Revisor's notes. — Through administrative reorganization, the Department of Natural Resources has eliminated the division of lands. Duties and responsibilities given to the division of lands under this chapter have been assigned to other divisions of the department. Duties and responsibilities given to the director of the division of lands under

this chapter have been assigned to the deputy commissioner for operations, who has been given the additional title "director of lands."

Cross references. — For reservations to which contracts for sale, lease or grant of state land and deeds to state land, properties or interest in state land are subject, see AS 38.05.125.

NOTES TO DECISIONS

Statute authorizing exchange of land between state, United States government and regional corporation held not invalid. — See *State v. Lewis*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630,

appeal dismissed and cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977), decided under former AS 38.95.060.

Sec. 38.50.010. Authorization. Subject to the requirements of this chapter, the director, with the concurrence of the commissioner, is authorized to dispose of state land or interest in land by exchanging it for land, interest in land, or other consideration. Exchanges shall be for the purpose of consolidating state land holdings, creating land ownership and use patterns which will permit more effective administration of the state public domain, facilitating the objectives of state programs, or other public purposes. (§ 1 ch 240 SLA 1976)

Sec. 38.50.020. Value of properties exchanged. (a) The land, interest in land, and other consideration which the state receives in an exchange made under this chapter shall be equal to or exceed the appraised fair market value of the land, interest in land or property exchanged by the state; however, the director may accept cash from, or pay cash to, any other party to an exchange in order to equalize the value of the property or other consideration conveyed and received by the state. If the director determines that the property to be exchanged is not equal in appraised fair market value or if the value cannot be ascertained with reasonable certainty, the director may enter into an exchange on a finding that the appraised fair market value of the property to be received, together with the value of other public benefits, equals or exceeds the value of the property which the state will relinquish. An exchange or a final agreement to exchange is subject to legislative review under AS 38.50.140 if the exchange or a final

agreement to exchange involves state land having an appraised or estimated fair market value of more than \$5,000,000, or is for other than equal appraised fair market value.

(b) An appraisal required by this section is presumed accurate and valid for a period of one year from the time the appraisal is completed. After that time, or if the director has reason to believe that the value of the appraised property has changed significantly during the original one year period, a reappraisal of the property is required. (§ 1 ch 240 SLA 1976; am §§ 68, 69 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), substituted "on a finding" for "if he finds" in the second sentence and "or a final agreement to exchange" for "for other than equal appraised fair market value" and "under AS 38.50.140 if the exchange or a final agreement to exchange involves state land having an appraised or estimated fair

market value of more than \$5,000,000, or is for other than equal appraised fair market value" for "as provided in § 140 of this chapter" in the third sentence; and, in subsection (b), substituted "one year" for "six months" in the first sentence and "one year" for "six-month" in the second sentence.

Sec. 38.50.030. Parties. (a) The director may exchange land and interests in land with a government agency, organization, corporation, individual, or other person. At the beginning of discussions concerning a proposed exchange, the director shall require proof that each party to the negotiations is the owner of, or is legally entitled to, the property which the party desires to exchange and proof that a person acting as an agent for a principal has the authority to negotiate an exchange in behalf of the principal.

(b) The director may negotiate an exchange involving more than one party; however, in order to ascertain whether the equal value requirements of this chapter have been met, the director shall consider only the land and other consideration which the state would convey and receive if the exchange were executed. (§ 1 ch 240 SLA 1976)

Sec. 38.50.040. Land subject to exchange. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of exchange any state land or interest in land regardless of the authority under which the land or interest was obtained by the state. (§ 1 ch 240 SLA 1976; am § 13 ch 181 SLA 1978; am § 17 ch 182 SLA 1978; am § 70 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment deleted the former second sentence, which read "The conveyance of uni-

versity land shall be approved in the manner prescribed in AS 38.05.030."

Sec. 38.50.050. Conveyance of mineral rights. Subject to the requirements of this chapter, the director is authorized to exchange mineral rights in state land to the extent that the conveyance is authorized by the state constitution and applicable general law. The director

may not exchange or receive the surface estate of land or the mineral rights in it, one without the other, unless the separation of estate is necessitated by a prior separation of ownership or by restrictions in applicable law, or the director otherwise finds that the conveyance or receipt of the surface or mineral estates, one without the other, is necessary to achieve a significant public purpose. (§ 1 ch 240 SLA 1976)

Sec. 38.50.060. Reservations and covenants. The director may include in any patent or other instrument issued under this chapter any reservations and covenants relating to the land which the director considers necessary to protect or promote the public interest. Reservations and covenants may include, but are not limited to, those relating to access, environmental protection, and use or development rights. The director may receive land which is subject to reservations and covenants if the director finds that the reservations and covenants are consistent with the public interest. (§ 1 ch 240 SLA 1976)

Sec. 38.50.070. Valid existing rights. Conveyances made by the state under this chapter are subject to valid existing rights, including, but not limited to, contracts, permits, leases, rights-of-way, and easements. Unless jurisdiction is waived, the appropriate state agency shall continue to administer valid existing rights as long as any revenues derived from the rights are distributed as provided in the exchange agreement. (§ 1 ch 240 SLA 1976)

Sec. 38.50.080. Prohibition against future considerations and alienation of selection rights. (a) The director may not negotiate or enter into a land exchange agreement which requires the identification of land, interest in land, or other consideration, except for the performance of necessary survey work, at any time after the agreement is initially executed.

(b) The director, in implementing the provisions of this chapter, may not alienate or agree not to exercise selection rights granted to the state in the Alaska Statehood Act or other applicable law authorizing the state to select land or interest in land. (§ 1 ch 240 SLA 1976)

Sec. 38.50.090. Coordination with other state agencies. (a) During the negotiation of a land exchange, the director shall consult with other departments and other divisions of the Department of Natural Resources relative to matters which are within their jurisdiction. If land under the jurisdiction of a state agency other than the Department of Natural Resources may be involved in a proposed exchange, the director shall afford the head of that agency an opportunity to participate in the discussions respecting the land.

(b) The director shall be afforded an opportunity to review and comment on any land exchange proposed by a state agency other than the Department of Natural Resources and the University of Alaska.

(§ 1 ch 240 SLA 1976; §§ 71 ch 159 SLA 1984)

Effect of amendments. — The 1984 amendment added "and the University of Alaska" at the end of subsection (b).

Sec. 38.50.100. Finding requirement as to alternatives. Before circulating notice under AS 38.50.110, the director shall consider other alternatives to achieve the objectives of the proposed exchange in an effort to determine whether the proposed exchange will best serve the public interest. In making this determination, the director shall consider, among other things, the advantages and disadvantages of acquiring the land or interest in land for the state by means of purchase, lease, or selection under the Alaska Statehood Act, or condemnation. In addition, the director shall consider alternatives to the disposal through exchange of the state land or interest in land, including, but not limited to, lease or sale. (§ 1 ch 240 SLA 1976)

Sec. 38.50.110. Notice of proposed exchange. (a) Not more than 60 days nor less than 30 days before a public hearing is scheduled under AS 38.50.120 the director shall circulate a notice containing the information specified in (b) of this section except as provided in (c) of this section. The director shall

(1) publish or post the notice as provided in AS 38.05.945, except as otherwise specified in this section; the director shall publish the notice in a newspaper of general circulation in the vicinity of the land which the state will receive and in the three most populated cities of the state;

(2) mail the notice to any person who has filed a request for notice of proposed exchanges;

(3) mail the notice to each member of the legislature;

(4) mail the notice to each municipality the boundaries of which encompass or are located within six linear miles of land involved in the proposed exchange;

(5) circulate the notice to the Office of the Governor and to all state departments;

(6) mail the notice to any corporation organized under the Alaska Native Claims Settlement Act, which corporation owns or has selected land located within a radius of 15 linear miles from land or property involved in the proposed exchange; and

(7) mail the notice to any other party, including an organization of land users, that the director considers appropriate.

(b) The notice of proposed exchange shall include the following information:

(1) a statement of the proposed action and a legal or other appropriate description of the tracts and potential uses of land involved in the proposed exchange;

(2) a map of sufficient scale to allow identification of each tract in relationship to reference points which are easily identified by laymen;

(3) the name and post office address of each party to the proposed exchange;

(4) a statement that any person asserting a claim to the property involved or desiring to comment or to obtain further information concerning the exchange should contact the office designated in the notice;

(5) the date, time, and place of a public hearing which has been scheduled in connection with the proposed exchange.

(c) The director shall provide the information required under (b) of this section in the notice required under AS 38.05.945(b) for exchanges of

(1) less than 500 acres of state land; or

(2) state land having an appraised or estimated fair market value of less than \$100,000. (§ 1 ch 240 SLA 1976; am § 14 ch 181 SLA 1978; am § 20 ch 182 SLA 1978; am §§ 72, 73 ch 152 SLA 1984)

Revisor's notes. — Former AS 38.50.110(a)(6) was amended by sec. 14, ch. 181 SLA 1978 and was repealed by sec. 20, ch. 182 SLA 1978. Although it appears likely that the repeal of former AS 38.50.110(a)(6) in ch. 182 was intended to be covered by the contingent effective date contained in sec. 27 of that Act, it was not included in that section or any of the other special effective date sections. Consequently, the repeal is treated as having the constitutional effective date of 90 days after ch. 182 became law, and this

repeal is treated as superseding the amendment contained in ch. 181.

Effect of amendments. — The 1984 amendment added subsection (c) and, in subsection (a), added "except as provided in (c) of this section" at the end of the first sentence in the introductory paragraph, combined the former two sentences in paragraph (1) into the present single sentence, redesignated former paragraphs (7) and (8) as present paragraphs (6) and (7), and substituted "the director" for "he" in paragraph (8).

Sec. 38.50.120. Public hearings. (a) The commissioner may hold as many public hearings as is considered appropriate. For an exchange of state land having an appraised or estimated fair market value of more than \$5,000,000, there shall be at least three public hearings in one or more municipalities close to the state land proposed for exchange before it is submitted to the legislature for approval.

(b) A person who desires to testify at a hearing shall be provided an opportunity to do so, subject to reasonable time limits. In addition, the director shall hold the hearing record open for at least two weeks following the conclusion of a hearing in order to receive supplemental or additional statements. (§ 1 ch 240 SLA 1976; am § 74 ch 152 SLA 1984)

Effect of amendments. — The 1984 amendment in subsection (a), substituted "commissioner" for "director" in the first sentence and rewrote the second sentence, which formerly read "There shall be at least one public hearing."

Sec. 38.50.130. Report on proposed exchange. (a) In conjunction with the public notice required by AS 38.50.110, the director shall prepare and distribute the report required by this section to the parties listed in AS 38.50.110(a)(2) — (7) and to any other party who requests

it. The report shall contain, among other things, a copy of the notice required by AS 38.50.110 and a discussion in a concise format designed to facilitate public understanding of the issues of

(1) the physical characteristics of the land involved, including the surface and mineral resources associated with the land;

(2) the appraised fair market value of each tract involved in the exchange or, if the exchange is for other than equal appraised fair market value, the nonmonetary values which are involved;

(3) the benefits and detriments which can be expected to accrue, including possible social, economic, and environmental impacts; and

(4) alternatives to the proposed exchange.

(b) Upon termination of the period provided for agency and public comment, the report and the proposed land exchange may be revised, if appropriate, to reflect comments or other information which has come to the director's attention. A brief summary of all comments and information received shall be appended to the report. (§ 1 ch 240 SLA 1976; am § 71 ch 59 SLA 1982)

Effect of amendments. — The 1982 amendment corrected an erroneous internal reference.

Sec. 38.50.140. Legislative review. Within 10 days of the convening of a regular legislative session, the governor shall transmit to the president of the senate and the speaker of the house of representatives any proposal for a land exchange required to be submitted to the legislature for approval under AS 38.50.020(a) that is scheduled to occur before the next legislative session. If exigent circumstances seriously affecting state interests so require, the governor may submit the proposed exchange to the legislature at some other time. A finding of exigent circumstances shall be carefully documented in the letter of transmittal. The director is authorized to conclude a proposed exchange agreement upon approval by the legislature of the proposed exchange agreement. A decision by the legislature to disapprove a proposed exchange shall be accompanied by a recommendation to the governor with respect to future actions which the director should take concerning the exchange. (§ 1 ch 240 SLA 1976; am § 75 ch 152 SLA 1984)

Effect of amendments. — The 1994 amendment substituted "required to be submitted to the legislature for approval under AS 38.50.020(a) that" for "for other than equal appraised fair market value which" in the first sentence and "upon approval by the legislature of the proposed

exchange agreement" for "unless either house of the legislature by simple resolution disapproves of the exchange within 60 legislative days of transmittal by the governor" in the next-to-last sentence and deleted "in his view" following "If" in the second sentence.

Sec. 38.50.150. Execution of exchange. If a deed, contract of exchange, or other instrument of conveyance which the director

receives to effectuate an exchange is properly executed, acknowledged, and authorized by the appropriate party, the director shall accept conveyance of title to the land and other property which the state is to receive as consideration, and shall issue a patent, contract of exchange or other instrument of conveyance to the appropriate party for the property which the director is then obligated to convey. Before acceptance by the director of a deed, contract of exchange or other instrument, no action taken by the director or by any other state official creates a right against the state with respect to state land. (§ 1 ch 240 SLA 1976)

Sec. 38.50.160. Regulations. The commissioner may adopt regulations under the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of this chapter. (§ 1 ch 240 SLA 1976)

Sec. 38.50.170. Definitions. In this chapter, unless otherwise specified,

- (1) "commissioner" means the commissioner of natural resources;
- (2) "director" means the director of the division of lands;
- (3) "state land" means all land including shore, tide and submerged land or unsevered resources belonging to or acquired by the state excluding interests in land severed or constructively severed from the land. (§ 1 ch 240 SLA 1976)

Chapter 95. Miscellaneous Provisions.

Article

- 1. Manner of Conveying State's Interest in Land under Its Jurisdiction (§ 38.95.010)
- 2. Management Contracts and Land Exchanges; P.L. 92-203 Corporations (§§ 38.95.050 — 38.95.080)
- 3. Steering Council for Alaska Lands (§§ 38.95.100 — 38.95.140)
- 4. Survey and Improvement of State Land (§§ 38.95.150 — 38.95.160)

Revisor's notes. — Through administrative reorganization, the Department of Natural Resources has eliminated the division of lands. Duties and responsibilities given to the division of lands under this chapter have been assigned to other divisions of the depart-

ment. Duties and responsibilities given to the director of the division of lands under this chapter have been assigned to the deputy commissioner for operations, who has been given the additional title "director of lands."

Article 1. Manner of Conveying State's Interest in Land under Its Jurisdiction.

Section

- 10. State's interest may not be obtained by adverse possession or prescrip-

Sec. 38.95.010. State possession or prescription runs against the title of the state. No title of the state may be acquired in any other manner except as provided in AS 38.95.010. (AS 38.95.010; am § 1 ch 240 SLA 1976)

Revisor's notes. — Section 38.95.010 dealt with title of the United States lands and has been omitted since statehood. The 195

Applied in Walsh v. Emery, Op. No. 2072 (File No. 465 (1980); Classen v. State, 1

Article 2. Management

Section

- 50. Contracts between departments of natural resources and corporations

Sec. 38.95.050. Contracts between departments of natural resources and P.L. 92-203 corporations under Alaska law pursuant to the Settlement Act (P.L. 92-203). A contract with the state for the management of land disposal of this land by the state or a corporation owning it. The contract shall be either party to it; it shall be subject to law or regulation. The Department of Natural Resources is authorized to expend funds necessary to carry out this section. (AS 38.95.050; SLA 1972)

Revisor's notes. — Section 38.15.050. Renumbered to 38.95.050. Legislative history

Sec. 38.95.060. Eminent domain. For current law, see

HB39: SECTIONAL ANALYSIS

Sec. 1:

(a) allows the Director of Agriculture to purchase an agricultural preservation easement from private land owners whose land has agricultural value and meets the requirements of AS 03.07.020.

(b) allows the Director of Agriculture with the concurrence of the Commissioner of the Department of Natural Resources to exchange state land or an interest in state land for privately owned agricultural land or an agricultural preservation easement in privately owned land, if the privately owned land meets the requirements of AS 03.07.020 and the state land or interest in state land to be exchanged is classified under AS 38.05.300 for a purpose consistent with the disposal.

(c) states that state land being exchanged for an agricultural preservation easement in privately owned land must be of equal value, if it is not, the Director of Agriculture may either accept money from or pay money to the land owner. The money accepted or paid must equal the difference between the fair market value of the agricultural preservation easement and the fair market value of the state land or the interest in the state land being exchanged.

(d) prevents the Director of Agriculture from purchasing and agricultural preservation easement or exchanging state land for privately owned land or an agricultural preservation easement for purposes other than to preserve agricultural use of the land.

(e) defines the procedures the Director of Agriculture shall follow before disposing of state land or an interest in state land or agreeing to the acquisition of privately owned agricultural land or an agricultural preservation easement in privately owned land.

(f) defines the procedures by which a land owner may apply for an sale, exchange or donation of an agricultural preservation easement and the also the restrictions which apply to the agricultural preservation easement land after a sale, exchange or donation is made.

(g) specifies where the Director of Agriculture may obtain monies for the purchase of land or interest in land under AS 03.07.

sec. 03.07.020 defines those lands that may be eligible for protection under this chapter.

sec. 03.07.030 provides for a system for setting up a priority system for the purchase of agricultural preservation easements and outlines those priorities.

sec. 03.07.040 provides the criteria for selecting lands within a priority district if funds are not available for all eligible lands within the district.

03.07.050 directs the director to assess any comprehensive plans or ordinances within a municipality and to consider recommendations from the municipality regarding priorities for farmland preservation within the municipality before allocating any money to a preservation priority district.

03.07.060 outlines the criteria by which the determination of eligibility for sale or exchange of an easement may be made.

03.07.070 allows the Director of Agriculture to accept an offer to buy or exchange or to make a counter offer to buy or exchange.

03.07.080 defines how the value of an agricultural preservation easement may be determined.

03.07.090 outlines the uses of an agricultural preservation easement permitted under this chapter.

03.07.100 provides the definitions for terms used in this chapter.

- Sec. 2: amends AS 29.53.035 by the addition of wording relating to agricultural preservation easement lands and how they will be assessed for tax purposes in relation to their sale to the state.
- Sec. 3: amends AS 29.53 by adding a new section (.036) dealing with agricultural preservation easement lands and how they will be assessed.
- Sec. 4: amends AS 38.05.945(a) by adding a new paragraph which requires standard notice requirements for disposal of state land or interest in state land for an agricultural preservation easement.
- Sec. 5: directs the Commissioner of Natural Resources to report to the first session of the Fifteenth Legislature on the costs and implications of this act.

HB 39 PRESERVATION OF AG LANDS

BACKUP INFO:

This piece of legislation originated from a situation in the Mat-Su Borough, the Fairbanks area and other areas which may or may not be perceived as a problem. With increasing numbers of people moving from Anchorage out to the Mat-Su area, more and more prime farmland has been converted to residential housing tracts. In an effort to save some of that farmland and at the same time give those people who farm a chance to realize the benefits of the real value of their property, some procedure was needed. HB 39 provides a procedure where the state or an individual can initiate a process to facilitate a purchase to preserve agricultural land or make an exchange for state land or an interest in state land to preserve agricultural land.

HB 39 does not require the Division of Agriculture to purchase agricultural preservation easements, nor does it require any exchanges of land be made. Its only purpose is to set up a procedure in which a purchase or exchange may occur. Considering the rate at which prime farmland is being converted into residential lots, it may be of benefit to have some system, such as HB 39 provides, which would allow the state an avenue of action to try and preserve ag lands.

Introduced: 1/30/85
Referred: Community & Regional
Affairs and Finance

1 IN THE HOUSE

BY THOMPSON AND BINKLEY

2

HOUSE BILL NO. 154

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state hiring in rural communities
7 and areas."

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

9 * Section. 1. AS 39.25 is amended by adding a new section to read:

10 Sec. 39.25.185. RURAL VACANCY NOTICE PROCEDURES. (a) A depart-
11 ment or agency that intends to fill a position in which the majority
12 of work is performed in one or more rural areas or communities in the
13 state shall comply with this section.

14 (b) At least 30 days before filling the position, the department
15 shall give notice of intent to fill a vacancy by mailing notice of the
16 vacancy and of the procedures established by this section to the
17 postmaster, the village council, the city government, or a nonprofit
18 organization offering employment agency services in each rural area or
19 community in which the person hired to fill the position will work.
20 The department shall publicize the vacancy on a local radio or TV
21 station and in local newspapers serving the area. The department
22 shall provide vacancy notices to the legislative information office
23 serving the area.

24 (c) The department shall accept applications for the position
25 from residents of a rural area or community in which the person hired
26 to fill the position will work. The department shall review the
27 applications and either determine whether the applicant meets the
28 minimum qualifications for the position or send a copy of the applica-
29 tion to the division of personnel and request the division to

1 determine whether the applicant meets the minimum qualifications. If
2 by the time the department is prepared to make its hiring decision
3 neither the department nor the division of personnel has determined
4 whether the applicant meets the minimum qualifications, then the
5 department shall presume that the applicant meets the minimum quali-
6 fications.

7 (d) When selecting a person to fill the vacancy, the department
8 shall consider all applicants determined or presumed to meet minimum
9 qualifications under this section in addition to those it would con-
10 sider if this section did not apply.

11 (e) In this section, "rural area or community" includes an area
12 or community with a population of 6,100 or fewer people. The division
13 of personnel may adopt regulations consistent with this section and
14 shall consider the Bureau of the Census definition of urbanized areas
15 and rural areas when adopting regulations under this section.

HB 39

HOUSE RESEARCH AGENCY

RESEARCH REQUEST FORM

Request #

KEY WORDS

Requested for (Legislator)

Requested by (Legislative staff)

Date and time request received

KEY WORDS

ASSIGNMENT

Staff Date

CONFIDENTIAL? Yes No

SUBJECT DESCRIPTION

SUBJECT DESCRIPTION

PURPOSE:

Background Info/Pertinent Files?

ANTICIPATED COMPLETION DATE:

DELIVER TO: (Name)

(Address)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

February 5, 1985

The Honorable Peter Goll
Chairman, House Community and
Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Goll:

While the Department of Natural Resources desires to see Alaska's agricultural land used for agricultural purposes and supports the concept of agricultural land preservation, we are unable to support House Bill 44, as currently written, for the following reasons: 39

- 1) Protection of privately owned agricultural land is, in our view, largely a local government function. The state's interest is more importantly that agricultural lands be devoted to agricultural purposes than that specific lands be preserved for such use. Municipal governments can protect farm land from development, if this is important to residents of the community, by establishing appropriate planning and zoning requirements.
- 2) Much of the language in the bill duplicates existing powers of the Department of Natural Resources. The department is authorized by existing statute (attached) to exchange or purchase land or interests in land, if available to the state. The department is, therefore, able to obtain agricultural preservation easements in privately owned land, if it so desires. Because the department has other priorities for land acquisition or exchange, and because land acquisition requires special appropriations from the Legislature, interests such as those described in this bill have not been acquired by the state.
- 3) The statutory authority for acquiring agricultural preservation easements provided by this bill would reside in the Division of Agriculture, located in Palmer. Departmental land acquisition authority

February 5, 1975

currently resides in the Division of Land and Water Management, in Anchorage. To have two separate offices in the department responsible for land acquisition would be duplicative, and the special acquisition procedures outlined in this bill would require additional staff to perform. We are unable to support additions to our budget to perform these services.

In the event the Legislature desires to enact an agricultural land preservation bill, we offer the following suggestions for changes that would make it more acceptable to the department.

- 1) Establish that the Director of Land and Water Management may acquire by purchase or exchange an agricultural preservation easement in private land and provide a definition of the property rights to be acquired by the state and retained by the land owner.
- 2) Establish an agricultural preservation easement fund to be used only for the purpose of purchasing such easements. Legislative appropriations to the fund would not be made until state revenues begin to rise. Private donations to the fund would be acceptable at any time. Development of regulations for the use of the fund could be required.

Attached for your information is a section by section analysis of the effects of the bill on the department.

If we may provide additional information, please let me know.

Sincerely,

Bob Arnold, Deputy
f Esther C. Wunnicke
Commissioner

Attachments

cc: Representative Larson

TAX RELIEF PROGRAMS



TAX RELIEF PROGRAMS
FOR THE FISCAL YEAR 1984
STATE OF ALASKA
BILL SHEFFIELD, GOVERNOR

PREPARED BY
DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
MUNICIPAL & REGIONAL ASSISTANCE DIVISION
OFFICE OF THE STATE ASSESSOR
POUCH BH
JUNEAU, ALASKA 99811
465-4783 OR TOLL FREE ZENITH 2222

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Farm Land Use Assessment

ALASKA STATUTES TITLE 29, MUNICIPAL GOVERNMENT
CHAPTER 53, MUNICIPAL ASSESSMENT AND TAXATION:

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated to or being used for nonfarm purpose shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner shall be liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough. (sec 3 ch 229 SLA 1976)

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor with a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 percent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (sec 2 ch 118 SLA 1972; am sec 1 ch 90 SLA 1974; am sec 3 ch 229 SLA 1976; am sec 1 ch 66 SLA 1978)

FARM USE LAND ASSESSMENT

FY 84 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	NUMBER OF APPLICANTS	NUMBER OF ACRES	FULL AND TRUE LAND VALUE	TOTAL DEFERRED VALUE	TOTAL DEFERRED TAX
ANCHORAGE, MUNICIPALITY OF	2	116.39	\$ 1,396,000	\$ 1,356,538	\$ 11,138.05
FAIRBANKS NORTH STAR BOROUGH	23	3,367.12	5,171,830	4,622,480	31,596.62
HAINES BCROUGH	1	14.09	90,600	49,000	281.58
KENAI PENINSULA BOROUGH	17	3,316.79	4,192,900	3,539,300	20,361.89
KODIAK ISLAND BOROUGH	3	406.54	1,231,845	985,477	3,695.49
MATANUSKA-SUSITNA BOROUGH	<u>75</u>	<u>11,938.96</u>	<u>17,244,860</u>	<u>15,560,240</u>	<u>133,952.12</u>
STATEWIDE TOTAL	121	19,159.89	\$29,328,035	\$26,113,035	\$201,025.75
AVERAGE PER APPLICANT	1	158.35	\$ 242,380	\$ 215,810	\$ 1,661.37
AVERAGE PER ACRE			\$ 1,531	\$ 1,363	\$ 10.49

SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE

FISCAL YEAR 1978	86	15,467	\$13,807,490	\$11,373,877	\$118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249
FISCAL YEAR 1983	115	19,636	23,862,462	22,006,210	122,924
FISCAL YEAR 1984	121	19,159	\$29,328,035	\$26,113,035	\$201,025

Revenues collected through FY 84, as a result of withdrawal from the program, are as follows:

Number of Applicants:	2	Tax Deferred:	\$ 5,691.38
Number of Acres:	110.51	Tax and Interest Collected:	\$ 7,628.05

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FARM USE LAND ASSESSMENT
AS 29.53.035

Effective January 1, 1968, the first Farm and Agricultural Land Deferred Tax Program was enacted (ch 82 SLA 1967). Effective January 1, 1975, the act was substantially amended (sec 1 ch 90 SLA 1974). Effective January 1, 1977, the act was further amended (sec 3 ch 229 SLA 1976). And effective September 10, 1978, the filing deadline was moved to May 15 (sec 1 ch 66 SLA 1978).

The 1974 amendment reduced the yearly gross farm income requirement from 25% to 10%, provided for the averaging of income over a three year period, provided for estimated farm income for the current year, provided for the use of the lessee farm income to qualify the owner for farm use assessment, increased to seven years the deferred tax payment provision, and provided for reimbursement by the state of property tax revenue lost to the municipality through the operation of the act.

The 1976 amendment increased the penalty for conversion of the land to a use incompatible with farm use by requiring the owner to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years as though the land had not been assessed for farm use purposes.

The program was essentially inactive during the first four years of operation since agricultural and rural real estate, for a variety of reasons, simply was not assessed at as high a percentage of value as urban real estate.

The Farm Use Land Assessment Program requires a differential assessment for qualified farm land, with the owner's paying taxes on the land value as a farm, and the State's paying the taxes on the remaining value. If the land is converted to a use incompatible with farming, the owner is liable to pay the deferred tax for the preceding seven years.

Experience over the past several years has vividly demonstrated the difficulty of administering the existing legislation. The omission of a lien provision to make the eligible property liable for the payment to the state of an amount equal to the deferred taxes plus interest is a glaring weakness in the legislation which effectively negates the imposition of the penalty provisions.

FARM USE LAND ASSESSMENT

FY 84 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	NUMBER OF APPLICANTS	NUMBER OF ACRES	FULL AND TRUE LAND VALUE	TOTAL DEFERRFD VALUE	TOTAL DEFERRED TAX
ANCHORAGE, MUNICIPALITY OF	2	116.39	\$ 1,396,000	\$ 1,356,538	\$ 11,138.05
FAIRBANKS NORTH STAR BOROUGH	23	3,367.12	5,171,830	4,622,480	31,596.62
HAINES BOROUGH	1	14.09	90,600	49,000	281.58
KENAI PENINSULA BOROUGH	17	3,316.79	4,192,900	3,539,300	20,361.89
KODIAK ISLAND BOROUGH	3	406.54	1,231,845	985,477	3,695.49
MATANUSKA-SUSITNA BOROUGH	75	11,938.96	17,244,860	15,560,240	133,952.12
STATEWIDE TOTAL	121	19,159.89	\$29,328,035	\$26,113,035	\$201,025.75
AVERAGE PER APPLICANT	1	158.35	\$ 242,380	\$ 215,810	\$ 1,661.37
AVERAGE PER ACRE			\$ 1,531	\$ 1,363	\$ 10.49

SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE

FISCAL YEAR 1978	86	15,467	\$13,807,490	\$11,373,877	\$118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249
FISCAL YEAR 1983	115	19,636	23,862,462	22,006,210	122,924
FISCAL YEAR 1984	121	19,159	\$29,328,035	\$26,113,035	\$201,025

Revenues collected through FY 84, as a result of withdrawal from the program, are as follows:

Number of Applicants:	2	Tax Deferred:	\$ 5,691.38
Number of Acres:	110.51	Tax and Interest Collected:	\$ 7,628.05

ALASKA ADMINISTRATIVE CODE TITLE 19,
DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS
CHAPTER 38, FARM OR AGRICULTURAL LANDS

19 AAC 38.010. FORMS. (a) The Department of Community and Regional Affairs Form 21-410 and Form 21-411 are adopted for use in application for the farm and agricultural land use assessment and tax deferment program.

(b) Application and authorization forms shall be made available by and shall be returned to the clerk or assessor of the municipality in which the land for which the farm use assessment and tax deferment are sought is located. (Eff. 12/31/75, Reg. 56)

19 AAC 38.020. INCOME VERIFICATION. (a) In addition to the application prescribed in 19 AAC 38.010, an applicant must establish before May 15th of the assessment year that the gross income attributed to farm use land is at least 10 percent of the applicant's yearly gross income, by either

(1) providing the clerk or assessor of the municipality proof of income eligibility as shown by income tax returns or other reasonably documented information which is determined by the local assessor to be sufficient proof of eligibility; or

(2) providing the department with copies of signed federal income tax returns submitted to the Internal Revenue Service for the previous year.

(b) Failure to provide documentation as required by this section forfeits the claim for reimbursement for that assessment year. (Eff. 11/24/82, Register 84)

19 AAC 38.030. APPEAL. An Applicant for the farm use assessment and tax deferment who believes that the valuation or classification assigned to the land that is the subject of the application is erroneous may appeal to the board of equalization of the municipality in which the land is located in the manner provided by AS 29.53.130. The municipality shall report the disposition of all such appeals to the state assessor. (Eff. 12/31/75, Reg. 56)

19 AAC 38.040. MAINTENANCE OF RECORDS DUPLICATE COPIES. The municipality in which the land is located shall maintain separate files and records of all applications for the farm use assessment and tax deferment, whether allowed by the municipality or not, including valuation of the property under the full and true value standard of AS 29.53.060. Duplicate copies of all records relating to the application entered in the file shall be forwarded to the state assessor. The municipality shall investigate to determine whether title to land for which the assessment and deferment have been granted has been conveyed or alienated in such a way that the assessment or deferment may be terminated and shall advise the state assessor as to the results of its investigation. (Eff. 12/31/75, Reg. 56)

19 AAC 38.050. CONFIDENTIALITY. Tax records and other documents providing evidence of the applicant's eligibility for the farm use assessment and tax deferment are confidential and shall be used only for the purpose of ascertaining whether the applicant is entitled to the benefits of the assessment and deferment. (Eff. 12/31/75, Reg. 56)

19 AAC 38.060. DEFINITIONS. In this chapter:

(1) "farm use assessment" means the value of the unit or parcel of property for which application for a farm use assessment and tax deferment is made, based upon its highest and best use as farm or agricultural land;

(2) "yearly gross income" means the income of the applicant for the year preceding the tax year for which the application is filed and means the adjusted gross income of the applicant as defined in Section 62 of the Internal Revenue Code (26 U.S.C. 62). (Eff. 12/31/75. Reg. 56)



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

Zharoff Coghill
Ker Hella

Companion bill

SB 31 Sectional Analysis:

Section 1) When a department or agency has a vacant position to fill with the majority of the work being done in one or more rural areas of the State, they shall comply with the following:

b) 30 days notice of the vacancy mailed to the postmaster, village council, or city government, of each rural area where the work will be performed. The department shall also request assistance from any local radio station to publicize the vacancy.

c) The department shall accept applications from residents of the rural areas in which the work will be performed.

The department shall review applications and determine whether minimum qualifications have been met, or send the applications to the division of personnel to determine whether the minimum qualifications have been met.

d) During the selection process, the department shall consider those applicants who meet the minimum qualifications for the rural higher sections of this bill as well as those who would normally be considered.

e) Defines "rural area" as having a population of 6,100 or less. Division of Personnel shall consider Bureau of Census "rural/urban" definitions when adopting regulations.

from Gruenberg

League of Women Voters of Alaska

9151 Skywood Lane
Juneau, Alaska 99801
February 26, 1985

*Eathy
have this
put in my
C.R.P.
Calendar
on 1/27/85*

The Honorable Peter Goll, Chairman
House Community & Regional Affairs
Committee
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: H.B. 39: Preservation of Agricultural Land

Dear Representative Goll:

The League of Women Voters of Alaska supports H.B. 39 and would like to see it considered by and moved out of the House Community & Regional Affairs Committee in a timely manner, with "do pass" recommendations.

Fertile farmland is a resource Alaskans cannot afford to lose to the pressures of subdivision sprawl, as has occurred in much of the rest of the United States. The dual mechanisms of (1) agricultural preservation easements and (2) taxation of agricultural land at the lower assessed valuation appropriate to its agricultural use will go a long way toward preserving the fertile farmland which already exists in Alaska. We have already begun to see, in the Matanuska Valley, how farmland which farmers have worked for years to develop its fertility can be lost in a few months. It would be ironic, indeed, if the State of Alaska, after trying so hard to support the development of new agricultural projects, allows already existing and fertile agricultural lands to be lost for lack of some protective mechanisms such as a system of agricultural preservation easements and favorable property taxation.

The League of Women Voters of Alaska adopted a land use position in 1975 and a land disposal position in 1980. We have been continuously active in land use and disposal issues before the Legislature, because we believe that the use of land affects

The Honorable Peter Goll, Chairman
February 26, 1985
Page Two

most aspects of life in our communities and affects the long-term economic future of our State. The LWVAK supported a similar bill (H.B. 148) in the 1984 Legislature. The League of Women Voters Education Fund has developed a resource document entitled "The Future of America's Farmland," a copy of which is attached for your committee's use.

Thank you for considering our views.

Sincerely,



Elizabeth Cuadra, Board Member
(Natural Resources Portfolio)

DEC:sd

Enclosure

cc: Committee Members (Wallis, Koponen, Gruenberg, Phillips,
Furnace, and Marrou)
Sponsor (Larson) (with encl.)
Commissioner Esther Wunnicke (DNR)

Suggested additional sources:

- (1) "Design With Nature," by Ian McHarg
- (2) Resources listed at the end of "The Future of America's Farmland," by LWVEF

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

February 5, 1985

The Honorable Peter Goll
Chairman, House Community and
Regional Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Goll:

While the Department of Natural Resources desires to see Alaska's agricultural land used for agricultural purposes and supports the concept of agricultural land preservation, we are unable to support House Bill 44, as currently written, for the following reasons:

- 1) Protection of privately owned agricultural land is, in our view, largely a local government function. The state's interest is more importantly that agricultural lands be devoted to agricultural purposes than that specific lands be preserved for such use. Municipal governments can protect farm land from development, if this is important to residents of the community, by establishing appropriate planning and zoning requirements.
- 2) Much of the language in the bill duplicates existing powers of the Department of Natural Resources. The department is authorized by existing statute (attached) to exchange or purchase land or interests in land, if available to the state. The department is, therefore, able to obtain agricultural preservation easements in privately owned land, if it so desires. Because the department has other priorities for land acquisition or exchange, and because land acquisition requires special appropriations from the Legislature, interests such as those described in this bill have not been acquired by the state.
- 3) The statutory authority for acquiring agricultural preservation easements provided by this bill would reside in the Division of Agriculture, located in Palmer. Departmental land acquisition authority

February 5, 1985

currently resides in the Division of Land and Water Management, in Anchorage. To have two separate offices in the department responsible for land acquisition would be duplicative, and the special acquisition procedures outlined in this bill would require additional staff to perform. We are unable to support additions to our budget to perform these services.

In the event the Legislature desires to enact an agricultural land preservation bill, we offer the following suggestions for changes that would make it more acceptable to the department.

- 1) Establish that the Director of Land and Water Management may acquire by purchase or exchange an agricultural preservation easement in private land and provide a definition of the property rights to be acquired by the state and retained by the land owner.
- 2) Establish an agricultural preservation easement fund to be used only for the purpose of purchasing such easements. Legislative appropriations to the fund would not be made until state revenues begin to rise. Private donations to the fund would be acceptable at any time. Development of regulations for the use of the fund could be required.

Attached for your information is a section by section analysis of the effects of the bill on the department.

If we may provide additional information, please let me know.

Sincerely,

Bob Arnold, Deputy
f Esther C. Wunnicke
Commissioner

Attachments

cc: Representative Larson

HB 39 Analysis

Department of Natural Resources

Sec. 03.07.010 (a) - The department currently has authority under AS 38.05.035 (a) (12) to purchase agricultural preservation easements. This section could be eliminated from the bill.

Sec. 03.07.010 (b) and (c) - The department currently has authority under AS 38.50.010 to exchange land and AS 38.50.020 describes the value of properties to be exchanged and appropriate procedures for determining exchange land values. This section could be eliminated from the bill.

Sec. 03.07.010 (d) - The department currently is not directed to purchase or exchange agriculture land solely for the purpose of preserving its agricultural use. This section would provide that direction.

Sec. 03.07.010 (e) - The statute referenced in this section, AS 38.05.345, has been changed to AS 38.05.945. This statute requires the department to provide notice for any disposal or any exchange of state land. This section is not needed since adequate public notice procedures for land disposals and exchanges currently exist in AS 38.05.945 and AS 38.50.110. Procedures for providing public notice of land purchases are not in statute. Money for land purchases is available only through legislative appropriations, and legislative hearings on such appropriations provide the public and local governments an opportunity to comment.

Sec. 03.07.010 (f) - Under 11AAC67, the department requires submission of an application by the land owner before an exchange is considered. This section is therefore not necessary. Lines 23-27 establish policy for the department concerning requirements for the land after a preservation easement is acquired by the state. For agricultural land sold by the state, specific agricultural activities are required. In addition, the owner of agricultural rights purchased from the state does not own development or mineral rights to the land.

Sec. 03.07.010 (g) - The department has no available funds for purchase of private lands and would require appropriations specific to that purpose. This section is not necessary.

Sec. 03.07.020 - These requirements are not included in current statutes but would be consistent with proposed changes to Title 38 concerning the definition of land available for agricultural homesteads.

Sec. 03.07.030 - Allows establishment of regulations for priority districts where agricultural preservation land will be purchased and also provides criteria for selection of land within each priority district. These requirements are not currently in statute.

Sec. 03.07.050 - Municipalities currently receive notice of state land actions in their area under AS 38.05.945, and we are required to consider their comments.

Sec. 03.07.060 - This section establishes procedures not currently used by the department for acquiring or exchanging land. Because exchanges and purchases take a lengthy period of time to complete, and purchases require Legislative appropriations, the timeframe established in this section might be very difficult to meet.

Sec. 03.07.070 - Not currently required, may be difficult to meet timeframes. Since money for purchases must be appropriated by the Legislature, the 90 Day requirement for completion of sales could not be met.

Sec. 03.07.080 (a) and (b) - Defines the maximum value of an agricultural preservation easement.

Sec. 03.07.090 (a) (2) - Not all private land owners have mineral rights. As written, this section conflicts with (b) on Page 7, lines 9-11. This section should be clarified to make it clear that no new land rights are being granted and that materials can be removed only for non-commercial farm uses.

Sec. 03.07.100 - Defines terms used in this bill.

Sec. 2. AS 29.53.035(a) and Sec. 29.53.036 and Sec.4. AS - Describes changes in Title 29 concerning assessment of property subject to an agricultural preservation easement.

Sec. 4. and Sec. 5. AS 38.05.945(a) - Establishes additional items subject to the public notice procedures in this statute, and adds a requirement to report agricultural preservation easement information to the legislature. Acquisition of an agricultural preservation easement could be added to this section as an item requiring public notice, but lines 27 - 29 on Page 9, and lines 1-2 on Page 10 are not necessary. If Section 5 is to be required, it should be located in the statute that establishes an agricultural preservation easement.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y. State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 21, 1983

MEMORANDUM

TO: Representative Barbara Lacher
FROM: Susan Brody, Director *SB*
RE: Preservation of Agricultural Lands (HB 148)
Research Request 83-58

HB 148 would allow the State to purchase preservation easements on privately-owned farmland for the purpose of protecting this land from conversion to urban uses. In selling the easement to the State, the land owner would relinquish the right to develop the land for any purpose other than farm use. Bob Harris of your staff asked us to summarize the bill and to estimate the amount and cost of land eligible for State purchase of easements. He also asked us to provide any available data concerning the amount of farmland converted to other uses.

Summary of HB 148

Section 1 of the bill finds that farmland located close to urban centers in Alaska is threatened because its market value for future development exceeds its market value for farm use. The bill further finds that the acquisition by the State of preservation easements on agricultural land will help to protect this land from conversion to urban uses.

Section 2 of the bill adds a new chapter to AS 03 entitled "Preservation of Agricultural Land." The way in which the preservation easement program would operate is described briefly below.

AS 03.07.010 would authorize the State to purchase agricultural preservation easements on privately-owned farm land. It also would allow the State to exchange State land for privately-owned agricultural land or for preservation easements on that land. Any sale, exchange or donation of an easement would be voluntary on the part of the land owner. Furthermore, the owner would not be required to farm the land as long as (s)he does not use or subdivide the land for residential, commercial or industrial purposes.

Under Section .020 of the new Chapter, land would be eligible for protection if it is privately owned and the soil under at least 40 percent of the surface of the parcel is classified as classes II-IV by the U.S. Soil Conservation Service. In addition, the parcel would have to contain at least 40 acres in cultivation or farm use or, if it is adjacent to an established farm(s), would have to have no less than 20

Section .070 would establish time limits within which the State could accept offers or make counter offers.

Under the proposed program, the State could purchase an agricultural preservation easement for either the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever was less (Section .080). The value determination would be based on one or more qualified appraisals.

Section .090 of the new Chapter would define the uses permitted on land subject to an agricultural preservation easement. These permitted uses would include:

1. agricultural use of the land by the owner;
2. removal of minerals or materials from the subsurface if the land were immediately returned to a condition as favorable to agriculture as existed prior to the extraction;
3. operation of machinery used in agricultural production;
4. sale of agricultural products produced on the land;
5. construction of buildings for farming operations; however, land used for farm residences would not be allowed to exceed one acre per 40 acres of land.

Residential subdivision would not be permitted on land subject to a preservation easement. Furthermore, the acquisition of a preservation easement by the State would not grant the public a right of access or use, nor would it affect any existing easements, rights of way, or rights of access.

Farmland Converted to Other Uses

We were able to obtain data on farmland conversion for the Matanuska-Susitna Borough only. Our attempts to obtain similar data from other areas of the state, such as the Fairbanks North Star Borough, met with no success.

The table on page 4 shows the amount of farm land subject to subdivision activity in the Matanuska-Susitna Borough from 1976 to 1982. Only approved subdivisions and waivers are included. According to Borough Manager Gary Thurlow, all land was located within farms prior to subdivision, but it was not necessarily cleared land or active crop land.

University of Alaska Study. A study conducted in 1978 by the U. of A.'s Agricultural Experiment Station for DNR¹ examined the feasibility of a development rights purchase program to protect Alaska's agricultural land. As described, this program has some similarities to the preservation easements programs as proposed in HB 148. I have attached a copy of relevant sections of the report for your information (see Attachment A). A brief summary of the authors' findings follows.

The report notes that the Soil Conservation Service identified approximately 15.2 million acres of potential agricultural land throughout the state. However, much of this land is away from population centers without surface transportation access, and is in either State or federal ownership. The report also contains data on actual utilization of land for crop production (commercial vegetables, feed crops and harvested grassland) in various regions of the state.

For the period 1971-76, there was an average of about 19,270 acres being utilized for crops in the state as a whole; 29 percent of this acreage was in the Tanana Valley, 59 percent in the Matanuska-Susitna Valley, and 11 percent on the Kenai Peninsula. In 1981, according to the U.S. Department of Agriculture, the amount of land in crops had increased to about 38,000 acres. Of this, 65 percent was in the Tanana Valley, 26 percent in the Matanuska-Susitna Valley, and 5 percent on the Kenai Peninsula (see Table 2).

Table 2
Alaska Cropland Utilization

	<u>1971-76 (avg.)</u>	<u>1981</u>
Tanana Valley	5,670 acres	24,700 acres
Mat-Su Valley	11,290 acres	10,000 acres
Kenai Peninsula	2,170 acres	2,000 acres
Other	140 acres	1,300 acres
	<hr/>	<hr/>
Total	19,270 acres	38,000 acres

Source: Alaska Crop and Livestock Reporting Service

¹ William Workman, Edward Arobio, Anthony Gasbarro, An Examination of a Development Rights Purchase Program for Alaska Agricultural Lands, (Agricultural Experiment Station, University of Alaska, January, 1979)

Land owners were also asked to place a value on the development rights to their land. However, the authors of the report indicate that many of the respondents apparently did not understand how to value a development right. This, in conjunction with the small number of respondents answering this question, may mean that the values obtained are unreliable. With this cautionary note in mind, the authors' reported average development rights values in the Fairbanks, Mat-Su and Kenai-Kodiak areas ranging between \$3,100 and \$3,600 per acre.

Farmland Use Value Assessment Program. Data from the State's farmland use value assessment program also might be used to determine the amount of interest in, and cost of, an agricultural preservation easements program. AS 29.53.035 allows farm use land to be assessed on the basis of its value for farm use and not as if it were subdivided or used for some nonfarm purpose. The program allows the land owner to defer taxes that would otherwise be due if the land were valued at market value. If the land is converted to nonfarm uses, the owner is then liable for all the back taxes (including interest) which were deferred through the program (see Attachment B).

As with the proposed program in HB 148, participation in the use value assessment program is voluntary on the part of the land owner. Data from the Department of Community and Regional Affairs on the use value program for fiscal years 1976 through 1982 is presented in Table 4. It shows that there were 115 participants in the program statewide in FY 82, 63 percent of whom were from the Mat-Su Borough. A total of 19,197 acres were subject to farmland use value assessment in FY 82.

The column on the table entitled "total deferred value" represents the development rights value of the land; that is, the difference between the full and true value of the land and the farm use value of the land. Dividing the total statewide deferred value by the number of acres in the program yields an average development rights value of \$1,073 per acre, while the statewide average full and true value is \$1,545/acre. The deferred (or development rights) value equals \$1,067 per acre in the Mat-Su Borough and \$887 per acre in the Fairbanks North Star Borough.

These values are considerably lower than those reported in the U. of A. study discussed earlier. According to Assistant State Assessor Mike Worley, the values may not reflect current market conditions as land in some boroughs has not been revalued for several years. Steve Van Sant, the Mat-Su Borough assessor, reports that they are currently in the process of reviewing farmland values as part of their revaluation process. He reported the most current range of values to Mike Worley for typical farms in the borough.

TABLE 4
FARM USE LAND ASSESSMENT

FY 82 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	<u>NUMBER OF APPLICANTS</u>	<u>NUMBER OF ACRES</u>	<u>FULL AND TRUE LAND VALUE</u>	<u>TOTAL DEFERRED VALUE</u>	<u>TOTAL DEFERRED TAX</u>
ANCHORAGE, MUNICIPALITY OF	5	124.31	\$ 2,607,800	\$ 1,802,088	\$ 13,364.58
FAIRBANKS NORTH STAR BOROUGH	17	2,839.48	2,965,125	2,517,950	\$ 14,144.82
HAINES BOROUGH	1	14.09	54,250	40,650	\$ 234.72
KENAI PENINSULA BOROUGH	18	3,790.24	5,415,250	3,239,350	\$ 13,072.78
KODIAK ISLAND BOROUGH	2	324.44	107,079	85,662	\$ 471.13
MATANUSKA-SUSITNA BOROUGH	<u>72</u>	<u>12,104.43</u>	<u>18,503,840</u>	<u>12,909,740</u>	<u>\$100,961.28</u>
STATEWIDE TOTAL	115	19,196.99	\$29,653,344	\$20,595,440	\$142,249.31
AVERAGE PER APPLICANT	1	167.0	\$ 257,855	\$ 170,091	\$ 1,236.95
AVERAGE PER ACRE			\$ 1,544	\$ 1,073	\$ 7.41
SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE					
FISCAL YEAR 1976	91	18,759	9,279,400	6,140,300	77,805
FISCAL YEAR 1977	84	15,970	13,783,182	11,552,062	99,170
FISCAL YEAR 1978	86	15,467	13,807,490	11,373,877	118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249

Source: Alaska Taxable, Department of Community and Regional Affairs



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 4, 1985

MEMORANDUM

TO: Representative Peter Goll

FROM: David Teal *Teal*
Director

RE: Approaches to Agricultural Land Preservation
Research Request 85-155

In preparation for hearings on HB 39, Bob Berry asked us to investigate approaches to agricultural land preservation. This memorandum briefly describes a variety of approaches used in other states to preserve agricultural land. The extent to which these different approaches have been effective is also discussed, as are some of the direct and indirect costs associated with their implementation.

Findings

In this memorandum, four techniques for preserving agricultural land are examined: agricultural zoning; tax incentives; purchase of development rights; and transfer of development rights. All of these approaches except zoning are voluntary programs which rely on the landowners' cooperation.

Of the four approaches, agricultural zoning and tax incentives have been used much more extensively than purchase or transfer of development rights to protect agricultural land. Studies of the effectiveness of the various techniques have revealed that tax incentives have been relatively ineffective in the long run in preserving agricultural land. Agricultural zoning has been effective in some situations, but has tended to be ineffective when minimum lot sizes have not been adequate and/or when residential development is allowed too liberally in farm zones. Both the purchase and transfer of development rights can potentially be very effective, but these techniques have been used only to a limited extent to date.

The studies that we have reviewed emphasize that any one approach to farmland preservation on its own is unlikely to insure the continuation of existing farming operations. In addition to protecting the farmland, studies point out the need to develop markets for agricultural products and to provide the infrastructure necessary for agricultural production.

Criticisms which are often made of agricultural land preservation programs in growing urban areas are that: 1) land which is needed for residential, commercial and industrial development is taken off the market; and 2) the price of other land increases, thus making residential and other nonagricultural uses more costly to develop. The extent to which these criticisms are valid depends upon a variety of factors; perhaps the most important variable is the amount of land available for development in a community. Some communities have found that the demand for residential/commercial/industrial development can be easily accommodated on land which is not suitable for farming. In other areas, there may be direct competition for scarce land between agricultural and nonagricultural uses.

Regulatory Approaches

Zoning is the primary regulatory approach to farmland preservation which has been used by local governments in many states. According to the 1982 National Agricultural Lands Study, "agricultural zoning is the most popular and common method used by local governments to prevent the use of agricultural land for nonagricultural purposes."¹

Agricultural zoning generally sets aside certain areas of a municipality in farm use zones, with large minimum lot sizes. Some zoning ordinances allow nonfarm dwellings in the agricultural zones, while others prohibit them altogether. Nonexclusive agricultural zones are probably the most common; in these zones, agriculture is the preferred use, but nonfarm dwellings and many institutional, utility and community uses are also permitted if they meet certain conditions.

During the 1970s, at least 270 jurisdictions (104 countries and 166 municipalities) adopted agricultural zoning to protect their farmlands.² Public attitudes toward agricultural zoning vary widely; in some communities, there is strong support while in others, a great deal of opposition has developed.

An example of agricultural zoning is found in the state of Oregon. State statute requires local governments to preserve farmlands through the adoption of exclusive farm use zones.³

¹Regional Science Research Institute, National Agricultural Lands Study, "The Protection of Farmland: A Reference Guidebook for State and Local Governments," U.S. Government Printing Office, 1982.

²National Agricultural Land Study.

³Oregon Revised Statutes, Chapter 215.

Some nonfarm uses are permitted in farm zones, including schools, churches, utility facilities and, with special approval, certain commercial activities, golf courses, parks, single-family dwellings, etc. A specific minimum lot size is not required; however, state guidelines note that any minimum lot size should be of an appropriate size to allow for the continuation of the existing commercial agricultural enterprise.

One of the criticisms of agricultural zoning is that it drives up the price of other land which is not agriculturally zoned. By limiting the supply of land for residential, commercial and industrial uses, agricultural zoning may indirectly cause the price of the remaining land to escalate. The National Agricultural Lands Study cites five case studies of agricultural zoning in which "the price of land within the designated development area had jumped appreciably after the agricultural zones and development areas were designated."

Tax Incentives

While regulatory approaches, such as zoning, prevent a land owner from converting his land to nonagricultural uses, other approaches are designed to discourage farmland conversion through the use of special incentives. These nonregulatory approaches to preserving agricultural land have been used by states and municipalities with varying degrees of success. Probably the most widely used incentive is some form of tax relief to the farmland owner; this tax relief can apply to property taxes, estate taxes or income taxes.

Property tax incentives include preferential assessment and deferred taxation. One problem often faced by farmers who own land near developing urban areas is that the land is assessed and taxed at its value for residential or commercial use, rather than its farm value.

Under preferential assessment, farmland is assessed at its agricultural use value, thus reducing a farmer's taxes. According to the National Agricultural Lands Study, 17 states authorize preferential assessment of farmland. Another 28 states, including Alaska, have deferred taxation programs. Under deferred taxation, farmland also is taxed at its use value; in addition, if the land is later converted to nonfarm uses, the owner must pay all or some portion of the back taxes that were deferred under the program.

The Alaska program (AS 29.53.035), for example, allows the land owner to defer property taxes that would otherwise be due if the land were assessed at market value. If the land is converted to nonfarm uses, the owner is then liable "to pay an amount equal to the additional tax at the current mill levy together with 8 percent interest for the

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preceding 7 years, as though the land had not been assessed for farm use purposes." An important component of the program is that the State reimburses municipalities for the real property tax revenues lost.

This voluntary program had 115 participants statewide in FY 82, 63 percent of whom were from the Mat-Su Borough. A total of 19,197 acres were subject to farmland use value assessment in FY 82. (See Attachment A for a summary of program statistics.)

It is important to note that tax incentives will be effective in reducing the conversion of farmland to other uses only when rising taxes are the farmer's primary motivation for selling his land. According to a 1979 University of Alaska report, studies of the success of use-value assessment in preserving agricultural lands have shown discouraging results. Although use-value assessment tends to keep land temporarily in agriculture, it does not prevent the conversion of agricultural land to other uses in the long run.

The National Lands Study makes the following findings about differential assessment programs:

In short, differential assessment and circuit breaker tax credits are not, in themselves, effective techniques for reducing the rate of conversion of farmland to nonfarm uses. Most sales occur in the fringes of urban areas, where other considerations such as high offering prices, demographic factors, and the disruptions of suburban development overwhelm rising property taxes as causes for the sale of farmland. Even where tax reductions may enable a farmer to keep farming, they often only postpone the sale a few years until he retires or dies.⁴

Purchase or Transfer of Development Rights

Purchase of Development Rights. As of 1980, four states and five local governments had established purchase of development rights programs for the purpose of protecting farmland.⁵ A development right, in the context of farmland protection, generally refers to the right of the land

⁴National Agricultural Land Study, page 63.

⁵Maryland, Massachusetts, Connecticut and New Hampshire all have purchase of development rights programs: New Jersey also had a demonstration project, initiated in 1976, which was later discontinued. King County, Washington, is an example of local government involvement in the purchase of agricultural rights. That program was not operating until bonds were sold in the fall of 1982.

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owner to develop the land for some nonagricultural use, such as a residential or commercial subdivision. When this right is purchased (by a state or local government), the land owner retains only the agricultural rights to the land and, thus, may use the land only for farm-related purposes. The acquisition of development rights is equivalent to the acquisition of an easement on the property.⁶

A voluntary program for the purchase of development rights will not be effective unless adequate public funds are available to purchase the rights and land owners are willing to sell their rights. In a 1979 study conducted by the University of Alaska's Agricultural Experiment Station, the researchers surveyed farmers in Alaska to determine their interest in a development rights purchase program. Farmers were mailed questionnaires in five regions of the state: Delta, Copper River Basin, Kenai-Kodiak, Fairbanks and Matanuska-Susitna. Most of the respondents in all regions except the Mat-Su area expressed little or no interest in selling development rights. In the Mat-Su area, one-half of the respondents indicated little or no interest, while one-half expressed moderate to high interest in such a program.⁷ (See Attachment B for a summary of the report's findings.)

Transfer of Development Rights. The purchase of development rights, described above, can be expensive for a state or local government to implement, especially if there is a lot of land owner interest in the program. The transfer of development rights (TDR) is an alternative approach which relies primarily on the private sector for its funding and implementation. Transfer of development rights shifts the responsibility for purchasing rights from the government to private developers.

The operation of a TDR system is described in the National Agricultural Lands Study as follows:

In the classic TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district in a systematic manner.

⁶A variation on the purchase of development rights is to purchase the property in fee simple and then to lease or sell it again with certain restrictions placed on its use. The Alaska program to sell agricultural rights to State-owned land is a related approach.

⁷William Workman, Edward Arobio, and Anthony Gasbarro, An Examination of a Development Rights Purchase Program for Alaska Agricultural Lands, Agricultural Experiment Station, University of Alaska, Fairbanks, January 1979. There were a total of 106 respondents statewide to the question regarding interest in development rights purchase.

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However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the development district, who may use these newly acquired development rights to build at higher densities than normally allowed by the zoning.⁸

At least 12 local governments in the United States have adopted TDR systems to preserve farmland and open space. Most of the ordinances allow only for the transfer of rights to build dwelling units in residential zones. According to the Lands Study cited above, very few transfers have actually occurred under the existing TDR ordinances.

* * *

A copy of an earlier memo on this subject is attached. Please let us know if you have any questions or would like further information on any of the approaches discussed in this memorandum.

DT

Attachments

⁸National Agricultural Lands Study, page 174.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 39
Title: Preservation of Ag Land

FISCAL DETAIL

Agency Affected: Natural Resources
Program Category Affected: NRMC

Sponsor: Rep. Larson
Requestor: House Comm. & Reg. Affairs
Date of Request: 02/01/85

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		70.0	70.0	70.0		
200 TRAVEL		4.0	4.0	4.0		
300 CONTRACTUAL		10.0	12.0	14.0		
400 SUPPLIES		1.5	1.5	1.5		
500 EQUIPMENT		1.8	1.0	.5		
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		87.3	88.5	90.0		

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		87.3	88.5	90.0		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

**Funding for purchase of agricultural preservation easements would vary with the amount and type of land offered to the state.

Implementation of this program would require at least one professional and one clerical worker to administer activities and prepare documents, arrange for appraisals and public meetings, and monitor compliance with land use requirements.

Prepared By: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: _____

Approved by Commissioner: Arms O. Armes Date: 2/5/85
Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):

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

7/1/84

Department of Natural Resources

Sec. 03.07.010 (a) - The department currently has authority under AS 38.05.035 (a) (12) to purchase agricultural preservation easements. This section could be eliminated from the bill.

Sec. 03.07.010 (b) and (c) - The department currently has authority under AS 38.50.010 to exchange land and AS 38.50.020 describes the value of properties to be exchanged and appropriate procedures for determining exchange land values. This section could be eliminated from the bill.

Sec. 03.07.010 (d) - The department currently is not directed to purchase or exchange agriculture land solely for the purpose of preserving its agricultural use. This section would provide that direction.

Sec. 03.07.010 (e) - The statute referenced in this section, AS 38.05.345, has been changed to AS 38.05.945. This statute requires the department to provide notice for any disposal or any exchange of state land. This section is not needed since adequate public notice procedures for land disposals and exchanges currently exist in AS 38.05.945 and AS 38.50.110. Procedures for providing public notice of land purchases are not in statute. Money for land purchases is available only through legislative appropriations, and legislative hearings on such appropriations provide the public and local governments an opportunity to comment.

Sec. 03.07.010 (f) - Under 11AAC67, the department requires submission of an application by the land owner before an exchange is considered. This section is therefore not necessary. Lines 23-27 establish policy for the department concerning requirements for the land after a preservation easement is acquired by the state. For agricultural land sold by the state, specific agricultural activities are required. In addition, the owner of agricultural rights purchased from the state does not own development or mineral rights to the land.

Sec. 03.07.010 (g) - The department has no available funds for purchase of private lands and would require appropriations specific to that purpose. This section is not necessary.

Sec. 03.07.020 - These requirements are not included in current statutes but would be consistent with proposed changes to Title 38 concerning the definition of land available for agricultural homesteads.

Sec. 03.07.030 - Allows establishment of regulations for priority districts where agricultural preservation land will be purchased and also provides criteria for selection of land within each priority district. These requirements are not currently in statute.

Sec. 03.07.050 - Municipalities currently receive notice of state land actions in their area under AS 38.05.945, and we are required to consider their comments.

Sec. 03.07.060 - This section establishes procedures not currently used by the department for acquiring or exchanging land. Because exchanges and purchases take a lengthy period of time to complete, and purchases require Legislative appropriations, the timeframe established in this section might be very difficult to meet.

Sec. 03.07.070 - Not currently required, may be difficult to meet timeframes. Since money for purchases must be appropriated by the Legislature, the 90 day requirement for completion of sales could not be met.

Sec. 03.07.080 (a) and (b) - Defines the maximum value of an agricultural preservation easement.

Sec. 03.07.090 (a) (2) - Not all private land owners have mineral rights. As written, this section conflicts with (b) on Page 7, lines 9-11. This section should be clarified to make it clear that no new land rights are being granted and that materials can be removed only for non-commercial farm uses.

Sec. 03.07.100 - Defines terms used in this bill.

Sec. 2. AS 29.53.035(a) and Sec. 29.53.036 and Sec.4. AS - Describes changes in Title 29 concerning assessment of property subject to an agricultural preservation easement.

Sec. 4. and Sec. 5. AS 38.05.945(a) - Establishes additional items subject to the public notice procedures in this statute, and adds a requirement to report agricultural preservation easement information to the legislature. Acquisition of an agricultural preservation easement could be added to this section as an item requiring public notice, but lines 27 - 29 on Page 9, and lines 1-2 on Page 10 are not necessary. If Section 5 is to be required, it should be located in the statute that establishes an agricultural preservation easement.