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Deanna Hall  
Operator's Signature

10/23/03  
Date

2003 SENATE NATURAL RESOURCES

SCR 4032

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Deanna Gillespie  
Operator's Signature

10/23/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-27-03

Tape Number	Side A	Side B	Meter #
1		X	4.4 - end
2	X		16.8 - 17.0 17.2 - 20.9
Committee Clerk Signature <i>Jane James</i>			

Minutes:

**Senator Ben Tollefson**, Vice Chairman of the Senate Natural Resources Committee opened the hearing on SCR 4032 directing the Legislative Council to study the feasibility and desirability of enacting legislative authorizing perpetual conservation easements.

All members of the Committee were present except Senator Thomas Fischer.

**Senator Tim Mathern** of District 11 sponsor of SCR 4032 introduced the resolution (See attached testimony). He also presented 3 additional handouts to the committee members (attached). He further stated that the grind of a legislative session and a hearing on such an important bill like this, does not allow enough time to really get those involved around the table to discuss it in detail.

**Representative Todd Porter** of District 34, cosponsor of SCR 4032 testified in support of SCR 4032. He stated the concerns of the landowners that run along the Missouri River and that they

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*Deanna Hall*  
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10/23/03  
Date

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Senate Natural Resources Committee

Bill/Resolution Number SCR 4032

Hearing Date 2-27-03

are afraid they will not be able to keep their families in farming and ranching because land values of the property against the river for agriculture will be far exceeded by development values.

For some of these landowners the only way they can sustain their operations is to sell off these easements and still keep the land in their ownership and operation. A lot of people are concerned about the federal government buying up these easements through non profit organizations and circumventing North Dakota existing laws. If the federal government can do this why can't other organizations to the same and conserve the land for agriculture.

Andy Mork of rural Mandan, ND testified in support of SCR 4032 stating he did not want to argue the issue of easements again but hoped the study would be a chance to investigate boarder than what is done during the session.

Bill Phiefer representing the North Dakota Chapter of the Wildlife Society testified in a neutral opposition of SCR 4032 and wanted to clarify that land can be sold with an easement.

Wade Mosser of the North Dakota Stockman's Association testified in opposition to SCR 4032 stated he would like to find a solution to the easement issue, but if the study is limited to perpetual, it would just put things back to the way there are. He suggested to amend the resolution by taking out perpetual and then let the legislature study conservation easements other than perpetual, and then it could be looked as to what could be changed at the federal level.

Senator Joel Heltkamp stated if this study would finally put this issue to bed so that it isn't presented again next session or will this open some eyes to whether or not another look is needed.

Senator John Traynor stated that the IRS requires an easement to be perpetual in order for the tax benefit and if the Legislative Council decides to study the issue, the committee would also

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Deanna Hall  
Operator's Signature

10/6/03  
Date

Page 3  
Senate Natural Resources Committee  
Bill/Resolution Number SCR 4032  
Hearing Date 2-27-03

study the tax implication and maybe something less than perpetual could be possible. Maybe the resolution could be amended to give the study more flexibility.

**Roger Banning**, Bismarck, North Dakota testified in opposition to SCR 4032 stating a perpetual easement is not fair to future generations and allowing a tax break for something to happen in the future is wrong.

**Gordon Bischoff** of Bismarck, North Dakota testified in opposition to SCR 4032 stating easements are about control and not conservation. He is not completely against the study to look into these easements but would like to be a part of that study as he has a lot of information about easements.

**Senator Mathern** wanted to clarify that his intent is for the study to include the alternative to perpetual easements which would be non perpetual easements like time limited easements and was comfortable if the committee amended SCR 4032 to do so.

**Senator Tollefson** closed the hearing on SCR 4032.

-----  
Tape 2, Side A 16.8 - 17.0, 17.2 - 20.9

**Senator Ben Tollefson** asked the committee to take a look at SCR 4032.

**Senator Joel Heitkamp** stated he felt this resolution warrants a look at and all sides of the issue could state their points.

**Senator Michael Every** made a motion for a Do Pass of SCR 4032.

**Senator Heitkamp** second the motion.

Discussion was held as to how many times this issue has been brought before the legislature.

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Page 4  
Senate Natural Resources Committee  
Bill/Resolution Number SCR 4032  
Hearing Date 2-27-03

Discussion was held to the present language of the resolution and if it should be looked at by the  
Legislative Council.

Senator Every and Senator Heltkamp withdrew their motions until this can be looked at.

Discussion was closed on SCR 4032.

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Deanna Heltkamp  
Operator's Signature

10/23/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 2-28-03 Discussion and action

Tape Number	Side A	Side B	Meter #
1	X		26.7 - end
Committee Clerk Signature <i>Jant James</i>			

Minutes:

Senator Thomas Fischer, Chairman of Senate Natural Resources Committee opened discussion on SCR 4032.

All members of the committee were present.

Senator Ben Tollefson stated the concern as to the language of the bill about perpetual and in visiting with the sponsor perhaps an amendment (presented to the committee) should be entertained which would boarden the scope of the study to be perpetual and non perpetual easements.

Senator Joel Heitkamp made a motion to accept the amendment 33108.0301.

Senator Michael Every second the amendment.

Discussion was held as to the wording of the amendment and the effect it would have to the resolution and if the amendment should in include wording about the tax issues. Concerns about water way easements was also discussed.

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*Deanna Thelma*  
Operator's Signature

10/23/03  
Date

Page 2

Senate Natural Resources Committee

Bill/Resolution Number SCR 4032

Hearing Date 2-28-03

Last session there was seven easement bills that were all killed and one resolution study was passed although it was not chosen for study.

Roll call vote # 1 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor made a motion to further amend the Amendment 33108.0301 to read on Page

1, Line 24, "the Legislative Council study perpetual and non perpetual easements and the feasibility of enacting legislation authorizing perpetual conservation easements".

Senator Heltkamp second the motion.

Roll call vote # 2 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor made a motion to amend Page 1, Line 1 "the Legislative Council study perpetual and non perpetual easements and the feasibility of enacting legislation authorizing perpetual conservation easements".

Senator Heltkamp second the motion.

Roll call vote # 3 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heltkamp made a motion for a Do Pass as Amended of SCR 4032.

Senator Every second the motion.

Roll call vote # 4 was taken indicating 5 YEAS, 2 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heltkamp will carry SCR 4032.

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Deanna Hall  
Operator's Signature

10/23/03  
Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

Senate Natural Resources Committee

☐ Conference Committee

Hearing Date 3-6-03 Discussion and action

Tape Number	Side A	Side B	Meter #
1	X		20.9 - 26.5
Committee Clerk Signature <i>Jant James</i>			

Minutes:

Senator Thomas Fischer, Chairman of the Senate Natural Resources opened discussion on SCR 4032.

All members of the Committee were present.

Senator John Traynor submitted an amendment to SCR 4032 that would include in the study modification, salability and termination of existing perpetual easements.

Senator Traynor made a motion to reconsider the action of the committee on SCR 4032.

Senator Michael Every second the motion.

Roll call vote # 1 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor made a motion to accept amendment 33108.0401.

Senator Ben Tollefson second the motion.

Roll call vote # 2 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Traynor made a motion for a Do Pass as Amended of SCR 4032.

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*Deanna Galt*  
Operator's Signature

10/23/03  
Date

Page 2  
Senate Natural Resources Committee  
Bill/Resolution Number SCR 4032  
Hearing Date 3-6-03

Senator Joel Heitkamp second the motion.

Roll call vote # 3 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator Heitkamp will carry SCR 4032.

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Deanna Ball  
Operator's Signature

10/23/03  
Date

33108.0301  
Title.

Prepared by the Legislative Council staff for  
Senator Mather  
February 27, 2003

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4032

Page 1, line 1, after the second "the" insert "relationship between and the merits of perpetual and nonperpetual easements and the"

Page 1, line 24, after the second "the" insert "relationship between and the merits of perpetual and nonperpetual easements and the"

Renumber accordingly

Page No. 1

33108.0301

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Deanna Hall  
Operator's Signature

10/23/03  
Date

Date: 2-28-03  
Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 14032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken To accept Amendment by Sponsor 33108.0301

Motion Made By Heit Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Dean Tollefson  
Operator's Signature

10/23/03  
Date

33108.0302  
Title.0400

Adopted by the Natural Resources  
Committee  
February 28, 2003

*JB*  
2-28-03

PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4032

Page 1, line 1; after "study" insert "perpetual and nonperpetual easements and"

Page 1, line 24, after "study" insert "perpetual and nonperpetual easements and"

Renumber accordingly

Page No. 1

33108.0302

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*Deanna Walker*  
Operator's Signature

10/23/03  
Date

Date: 2-28  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 4032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Ways to further amend for <sup>Page 1</sup> Line 24  
Motion Made By Traynor Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

33108.0303  
Title.0500

Adopted by the Natural Resources  
Committee

March 6, 2003

*JB*  
*343*

**PROPOSED AMENDMENTS TO SENATE CONCURRENT RESOLUTION NO. 4032**

In lieu of amendments to Senate Concurrent Resolution No. 4032 as printed on page 646 of the Senate Journal, Senate Concurrent Resolution No. 4032 is amended as follows:

Page 1, line 1, after "study" insert "perpetual and nonperpetual easements;"

Page 1, line 2, after "easements" insert "; and the modification, salability, and termination of existing perpetual easements"

Page 1, line 21, after the semicolon insert "and

**WHEREAS**, the United States Fish and Wildlife Service has acquired many perpetual easements for waterfowl production areas, wildlife refuges, and other wildlife or waterfowl purposes;"

Page 1, line 24, after "study" insert "perpetual and nonperpetual easements;"

Page 1, line 25, after "easements" insert "; and the modification, salability, and termination of existing perpetual easements"

Renumber accordingly

Page No. 1

33108.0303

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*Deanna Hall*  
Operator's Signature

*10/23/03*  
Date

Date: 2-28-03  
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 4032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend Page 1 - to remove "merit" & add language

Motion Made By Traynor Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Tollefson  
Operator's Signature

10/23/03  
Date



Date: 2-28-03  
Roll Call Vote #: 4

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 403

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Heithaus Seconded By Ging

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg		✓			
Senator Stanley W. Lyson	✓	✓			
Senator John T. Traynor	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Heithaus

If the vote is on an amendment, briefly indicate intent:

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Deanna Thelma  
Operator's signature

10/23/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 3, 2003 8:55 a.m.

Module No: SR-37-3707  
Carrier: Heltkamp  
Insert LC: 33106.0302 Title: .0400

**REPORT OF STANDING COMMITTEE**

**SCR 4032: Natural Resources Committee (Sen. Flecher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4032 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "study" insert "perpetual and nonperpetual easements and"

Page 1, line 24, after "study" insert "perpetual and nonperpetual easements and"

Renumber accordingly

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*Deanna Heltkamp*  
Operator's Signature

10/23/03  
Date

Date:  
Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 4032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken M # to reconsider of SCR

Motion Made By Traynor Seconded By Every

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall  
Operator's Signature

10/23/03  
Date

33108.0401  
Title.

Prepared by the Legislative Council staff for  
Senator Traynor  
March 5, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE CONCURRENT  
RESOLUTION NO. 4032

Page 1, line 2, replace "and" with a semicolon

Page 1, line 3, after "easements" insert "; and the modification, salability, and termination of  
existing perpetual easements"

Page 1, line 22, after the semicolon insert "and

WHEREAS, the United States Fish and Wildlife Service has acquired many  
perpetual easements for waterfowl production areas, wildlife refuges, and other wildlife  
or waterfowl purposes;"

Page 2, line 1, replace the second "and" with a comma

Page 2, line 2, after "easements" insert "; and the modification, salability, and termination of  
existing perpetual easements"

Renumber accordingly

Date:  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 4032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Amend 33108.0401

Motion Made By Wagner Seconded By Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg	✓				
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall  
Operator's Signature

10/23/03  
Date

Date:  
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 41032

Senate Senate Natural Resources Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Traynor Seconded By Heithaus

Senators	Yes	No	Senators	Yes	No
Senator Thomas Fischer	✓		Senator Michael A. Every	✓	
Senator Ben Tollefson	✓		Senator Joel C. Heitkamp	✓	
Senator Layton Freborg		✓			
Senator Stanley W. Lyson	✓				
Senator John T. Traynor	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Heithaus

If the vote is on an amendment, briefly indicate intent:

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Deanna Chiles  
Operator's Signature

10/23/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 6, 2003 1:54 p.m.

Module No: SR-40-4135  
Carrier: Heitkamp  
Insert LC: 33108.0303 Title: .0500

**REPORT OF STANDING COMMITTEE**

**SCR 4032: Natural Resources Committee (Sen. Fischer, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SCR 4032 was placed on the Sixth order on the calendar.**

In lieu of amendments to Senate Concurrent Resolution No. 4032 as printed on page 646 of the Senate Journal, Senate Concurrent Resolution No. 4032 is amended as follows:

Page 1, line 1, after "study" insert "perpetual and nonperpetual easements;"

Page 1, line 2, after "easements" insert "; and the modification, salability, and termination of existing perpetual easements"

Page 1, line 21, after the semicolon insert "and

**WHEREAS, the United States Fish and Wildlife Service has acquired many perpetual easements for waterfowl production areas, wildlife refuges, and other wildlife or waterfowl purposes;"**

Page 1, line 24, after "study" insert "perpetual and nonperpetual easements;"

Page 1, line 25, after "easements" insert "; and the modification, salability, and termination of existing perpetual easements"

Renumber accordingly

2003 HOUSE AGRICULTURE

SCR 4032

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Deanna Hill  
Operator's Signature

10/23/03  
Date



# 2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

House Agriculture Committee

☐ Conference Committee

Hearing Date 3-20-03

Tape Number	Side A	Side B	Meter #
ONE		B	35 TO 46.2
TWO	A		00 TO 19.2
Committee Clerk Signature <i>Edward D. Elfen</i>			

Minutes:

CHAIRMAN NICHOLAS: We will go to SCR 4032.

SENATOR TIM MATHERN: DIST. 11, FARGO, ND I am a sponsor for SCR 4032.

{{Senator Mathern passed out testimony and other literature on easements as to SCR 4032.

Please see attachments to testimony.}} The resolution is important for the long term effort to develop a cost effective response to devastating floods by use of permanent flood easements and a mitigation tool. It also offers the opportunity to figure out how to permanently protect some of the states significant agriculture open state wild life areas. The Resolution you have before you basically just goes through some of the facts our state does not permit easements beyond 99 years. What an easement is. The fact that there are people that want use easements to protect their agricultural land that permanent conservation easements could be used. Along the Red River for example that we do have a uniform conservation act in our country that 22 states

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Operator's Signature *Deanna Hall*

Date 10/23/03

Page 2  
House Agriculture Committee  
Bill/Resolution Number SCR 4032  
Hearing Date 3-20-03

Have put it in place. While we have a law that dose not permit perpetual easements we do have many easements being put in place by the Fish and Wild Life Service. Look at the present easements out there and see if they can be modified. Then reporting this back to the Legislative Session next time. The hand out that I am giving you deal with California, Texas, Baltimore, Minnesota etc. The third hand out is a summary of a property rights survey that has been done in ND. There has been a lot of debate about easements. Whether these are private rights. Whether the public would support this kind of effort. These questions were asked and these results of that survey. The survey dose indicate that the majority of people in ND believe that individual owners should have the right to determine what kind of easements they do make on there land and I just thought that data would be important to have before you. There is skepticism to permanent easements. Basically bill over the last legislative sessions have been promoted and defeated. So there is certainly skepticism or objection to easements that we have to deal with. My impression is that much of the objection relates to the Fish and Wild Life easements in the past years and that continues at the present time. Just because we have a law Against easements dose not mean that they are not being done. There are perpetual easements be done right now. It just means that these easements are not being done without North Dakotas law involvement. I think we need an understanding of all the options before us to move beyond a more limited reactive mode. The approach that we need is to do a through study of the issues and proceed accordingly in the next session. I am concerned that we as a state need to be in charge of easements. Without moving towards the structure like the uniform conservation easement act we are letting other entities control our future in the arena of perpetual easements

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*Deanna Hollenbeck*  
Operator's signature

10/23/03  
Date

Page 3

House Agriculture Committee

Bill/Resolution Number SCR 4032

Hearing Date 3-20-03

I am concerned that court action or citizen frustration may lead the legislator out of this important area of public policy. I am also that farmers and ranchers do not have the full set of tools available to them to keep there land in the family. Stewardship of our land is good for us now and is good for future generations. Easements are part of our stewardship and the resources available to us. We should study this issue in the interim in a matter where we get the full look at that issues and take the time to hear the many points of view in depth. The opposition and the support and new technical and tax variations that come about so that we can determine if easements might be in the interest of our state. That is my testimony. I ask for your support

REP. BELTER : Was it not last session that we had a big battle over easements. Is this not kind of a rehash of what we did last session.

SENATOR TIM MATAHERN: I believe we have had a battle on this for many years. I think the difference between those battles and this Resolution is this Resolution is saying lets hear these opposing points of view in the context of a study committee. This is not a Resolution to grant easements or to deny easements. This is a bill for the parties involved to study it with the Legislature to see if there is anything positive we could use. That would be the difference.

CHAIRMAN NICHOLAS: The reason the legislation that is currently on the books is because of all the problems that we have had with U.S. FISH AND WILD LIFE SERVICE. That was a long standing problem. It is still a long standing problem.

SPEAKER UNKNOWN: Mr. Chairman, one of the issues that a Senator from your area raises was easements granted a long time ago and unfair notion about is there a process of changing

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Date

Page 4

House Agriculture Committee

Bill/Resolution Number SCR 4032

Hearing Date 3-20-03

those easements. Page two--line 8 of the bill was brought up. "And the modification, salability, and termination of existing perpetual easements.

REPRESENTATIVE PORTER: DIST 34 MANDAN. I signed on to this Resolution after

There were several individuals in Morton County approached me talking about easements.

What they wanted to do with there property and what there rights were. I think that this study is Full encompassing. It talks about not only the possibility of perpetual easements but about are existing easement laws. It talks about the termination of existing perpetual easements. With the amendments that came from the Senate it addresses everybody's concern and it would be picked by legislative council to be studied I think it would bring to the table good by laws in regard to easements and how they work in ND

ANDY MORK: I am from rural Mandan. We have a farm along the Missouri River north of Mandan. We have a mile and a half of river front. We have been there since 1931. One of the ways we could conserve water fronts from further developments is to sell non development easements to preserve water fronts. You can donate {IRS WILL NOT RECOGNIZE WITHOUT PERPETUAL EASEMENTS.} It is getting a little more urgent because of Missouri River Developments. More time to study would be appropriate.

WADE MOSER: I am with the Stockman's Association. I am not necessarily here to oppose the Resolution. I want to compliment the sponsors for of the bill for there amendments in the Senate that take a look at from our perspective want to look at something other then perpetual And they did put that in there and also on line 8 of the second page where we maybe getting rid of some of the problem things. One of the things we would like to bring to your attention and

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*Deanna Hall*  
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10/23/03  
Date

Page 5

House Agriculture Committee

Bill/Resolution Number SCR 4032

Hearing Date 3-20-03

what our intent was in the Senate when we testified was that we would like the tone or the direction of the legislative council study to look at something other then perpetual easements. And those things are exactly what Mr Mork talks about. Maybe we can change the IRS CODE That recommends something other then perpetual. We would like to see the tone of it coming out with the direction other then perpetual. I don't think we are going to convince to many land owners that perpetual is the way to go. We have a concern over the uniform conservation easement act. If you have ever seen that that dose take the total complete control away from the land owner or from the state because of one provision and that is the third party enforcement. That is dangerous language. If you and I make an agreement and you sell my agreement to someone else to enforce the provisions of the agreement that you and I made. It has some problems. It has not been tested yet. There are a lot of things that we can learn from this study and maybe even convince some of the strong supporters of the perpetual easements that there are Other alternatives that we need to look at. We have addressed this legislation every session. I think the bill was killed 8 to 38 in the Senate this time. We should find solutions other then perpetual.

REP. BELTER : So would you rather this pass or not pass?

WADE MOSER: If we have to have perpetual, I think we are wasting our time.

REP. BELTER : There is no language in here to look at alternatives.

REP. MUELLER : This whole easement is about to come around full circle. There are those in this country who institute easements to protect the very thing that I think we have all been in fear of in regard to easements. By that I mean putting easements in place to protect farm land and ranch land. Maybe we do need to take a look at it. Economic Development.

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10/23/03  
Date

Page 6  
House Agriculture Committee  
Bill/Resolution Number SCR 4032  
Hearing Date 3-20-03

GORDON BISHOP: Easements can be disastrous. I have never talked to a person that was happy with easements I'd like to see Fish and Wild Life start selling easements. I don't see much difference in Wild Life and environmentalist. The bottom line of easements is to control our private property.

CHAIRMAN NICHOLAS: Any questions committee members.

CHAIRMAN NICHOLAS CLOSED ON SCR 4032

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10/23/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4032

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---21---03

Tape Number	Side A	Side B	Meter #
ONE		B	5.3 TO 6.0
Committee Clerk Signature <i>Edward D. Clifton</i>			

Minutes:

**CHAIRMAN NICHOLAS:** Ok go to SCR 4032. That is the resolution dealing with easements and perpetual easements

**REPRESENTATIVE WRANGHAM MOVED FOR A DO NOT PASS**

**REPRESENTATIVE BOEHNING SECONDED THE MOTION.**

**THE ROLL WAS 9 YES 2 NO 2 ABSENT**

**REPRESENTATIVE WRANGHAM CARRIED THE RESOLUTION**

**CHAIRMAN NICHOLAS CLOSED ON SCR 4032**

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*Deanna Chiles*  
Operator's Signature

10/23/03  
Date

SCR 4032  
3-21-03

Date:  
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

DO NOT PASS

Motion Made By

WRANGHAM

Seconded By

BOEHNING

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER					
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH		✓			
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT					
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE					
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MELLER		✓			
REPRESENTATIVE ONSTAD	✓				

Total (Yes)

9

No

2

Absent

2

Floor Assignment

WRANGHAM

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Deanna Hall

Date

10/23/03



**REPORT OF STANDING COMMITTEE (410)**  
March 21, 2003 12:44 p.m.

Module No: HR-51-5424  
Carrier: Wrangham  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SCR 4032: Agriculture Committee (Rep. Nicholas, Chairman) recommends **DO NOT**  
**PASS** (9 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). SCR 4032 was placed on  
the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-51-5424

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Deanna Galt  
Operator's Signature

10/23/03  
Date

2003 TESTIMONY

SCR 4032

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Deanna Talley  
Operator's Signature

10/23/03  
Date

**Senate Natural Resource Committee, February 27, 2003**

Chairman Fischer and Members of the Senate Natural Resources Committee.

My name is Tim Mathern, I am the Senator from District 11 in Fargo. I am a sponsor of Senate Concurrent Resolution 4032. This resolution is important to long-term efforts to develop a cost effective response to devastating floods by use of permanent flood easements as a mitigation tool. This study resolution also offers us the opportunity to figure out how to permanently protect some of the State's most significant agricultural, open space, cultural, wildlife, and scenic areas.

I know the opposition to permanent easements as evidenced by the defeat of a recent bill in the Senate. I have some handouts though which suggest to me that our citizens and farmers are loosing out on some important options. 3 Handouts.

I am concerned that we need to stay in charge of easements. Without moving to a structure like the Uniform Conservation Easements Act we are letting other forces control our future in the arena of perpetual easements. I am concerned that court action or citizen frustration will leave the legislature out of this important area of public policy.

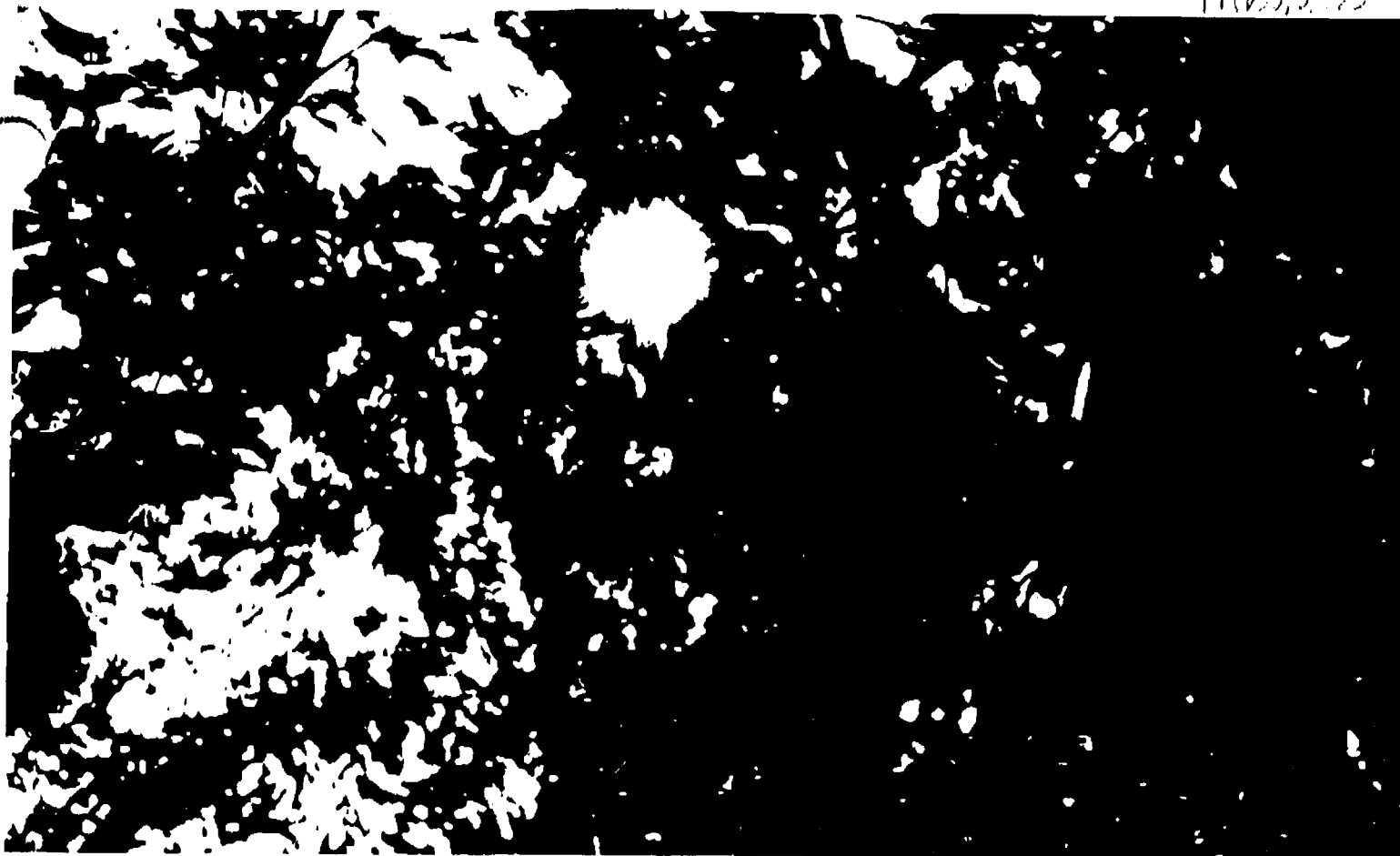
Stewardship of our land is good for us now and for future generations, easements are an integral part of our stewardship of the resources available to us. Lets study how this can be done to address the objections and the future possibilities.

I ask for your Do Pass recommendation for SCR 4032. Thank you for your attention and consideration.

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Deanna Hallen  
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10/23/03  
Date



## Balancing Business & Environment

**AFT helps the Golden State save its agriculture while promoting environmentally sustainable farming and ranching.**  
**By Jeanne Wirka**

CALIFORNIA IS A LAND OF NATURAL SUPERLATIVES. It is home to the tallest tree in the world, the highest mountain in the lower 48 states, and the lowest, hottest desert in the western hemisphere.

It also has the most productive farmland in the world.

What Steinbeck called "the top sweetness of the hills" has washed down upon California's valleys and flatlands, engendering the most productive farm economy in the nation. From cattle to cut flowers, almonds to avocados, California's \$27 billion agriculture industry accounts for 12 percent of U.S. production. That's more than the second and third leading states—Texas and Iowa—combined.

Yet California's very beauty and bounty attract people from all over. The most heavily populated and fastest growing state, California expects to see its current 35 million residents skyrocket to 59 million by 2040. Many of these new Californians are settling on farmland, with developers paving over productive land at a rate of 50,000 acres a year, according to state figures.

"California's dilemma is that we're the number one 'ag' state and the most populous," observes Yolo County farmer and American Farmland Trust board member Richard Rominger. "The more people that show up, the more problems farmers are going to have."

AMERICAN FARMLAND WINTER 2003

9

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10/23/03  
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Preserving prime farmland in the face of these population pressures is at the core of AFT's mission in California, notes California Regional Director John McCaull. But there's more to the equation than stopping sprawl. "Our best farmland is not only where people want to live, but where some of the most critical natural resources are," McCaull explains.

As a result, farmers and ranchers are being called upon to step up their role as environmental stewards, especially by providing wildlife habitat and open space. Yet even the most stewardship-minded landowners point out that it's a tough row to hoe while trying to remain economically viable in the face of low commodity prices and global competition.

To meet these challenges, AFT is working with farmers in three prime farming regions where population and environmental pressures are acute: the Central Valley, the Sacramento-San Joaquin Delta, and the Central Coast. Top priorities in the state are preserving prime farmland, giving farmers the tools they need to meet environmental stewardship goals, and making sure local planning efforts support agricultural viability.

### Plentiful Prairie, Plenty of People

California is not only top dog in total production and exports, but it dominates the markets for many of its 350 agriculture commodities. Got milk? It's California's number one farm product. Feel like a nut? California produces virtually all of our almonds, walnuts and pistachios. California also raises the nation's entire artichoke crop, and most of our avocados, dates, kiwis, figs and prunes. It's the leading U.S. producer of grapes, navel oranges, asparagus, tomatoes, lemons, carrots, lettuce and celery. To name a few.

This variety reflects the diverse landscapes of California's key farming regions. The 450-mile long Great Central Valley, blessed with deep, well-drained soils and hot summers, accounts for two-thirds of the state's farm production. At the conjunction of the valley's two mighty rivers lies the Sacramento-San Joaquin Delta, pumping the state's aquatic lifeblood to two-thirds of the state's population and tens of thousands of acres of farmland. To the west, a narrow band of coastal mountains delineates the Central Coast region with its fertile valleys and micro-climates that provide year-round growing conditions for specialty crops like artichokes, strawberries and lettuce. Finally, sunny Southern California remains an important producer of key commodities from citrus to alfalfa.

As vast as this fertile landscape appears today, the changes since World War II have been dramatic. Los Angeles County once led the nation in farm income until a large influx of new-

comers in the 1950s and 1960s overwhelmed the rural landscape. San Jose, today the hub of bustling Silicon Valley, was once a small city surrounded by cherry, plum and apricot orchards. With little in sight to stem current population pressures, further drastic transformations of the farm landscape expected.

California lost 500,000 acres of farmland to urban development between 1988 and 1998, and could lose a million more by 2040, according to the Agriculture Issues Center at the University of California, Davis. AFT projections show it could take less than half a century for the Highway 99 corridor that links Central Valley towns on rich alluvial soils at the base of the Sierra Nevada to solidify into an unbroken linear "city" from Bakersfield to Sacramento. The Interstate 80/Highway 101 route that traverses valuable farmland from Sacramento to Monterey County could, in that same time-frame, come to mirror the unbroken urban expanse from New York to Washington, D.C.

What troubles California farmers is not so much the quantity lost as the quality. Indeed, other states, such as Texas and Ohio, are losing farmland at rates two to four times higher than California, according to AFT's 2002 *Farming on the Edge* report. California, however, is losing its best farmland in those very regions that drive its remarkable productivity. Another AFT report ranks three California farm regions among the nation's 20 most threatened: Central Valley (#1), Central California Coast Valleys (#15) and the Imperial Valley (#17).

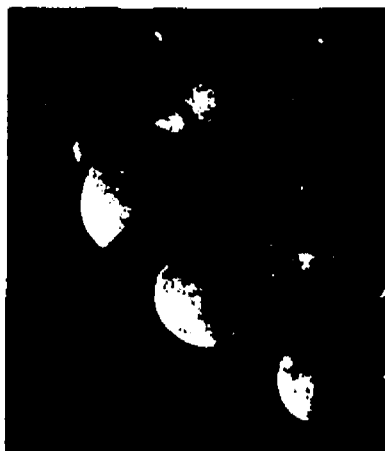
With the nation's top food-producing region also its most threatened, it's easy to see why preserving prime farmland in the Central Valley is AFT's top priority in the state.

"This is not just a state issue," says McCaull. "It's a national imperative."

### Protecting the Central Valley

Say the words "farmland protection" in California and you conjure the Williamson Act. Passed in 1965, the act offers property tax credits via renewable 10- or 20-year contracts for landowners who agree to keep their lands in agriculture. There are 16 million acres enrolled in the program today, well over half of the state's 27 million acres of crop and grazing lands. While the acreages are impressive, critics argue that the program's incentives are too short-term and can be easily overwhelmed by today's development pressures.

The use of farmland conservation easements—voluntary deed restrictions that keep farmland in farming in perpetuity—is a newer approach. Pioneered in California by the National Agricultural Land Trust in the early 1980s (see sidebar on page 20), the sale of easements has accelerated at the local level, with



Who hasn't eaten a fruit or vegetable grown in California?

GILSON STOCK PHOTO

## Policy Roundup

### Campaign for PDR Revving Up in Texas

In November 2001, the Texas House Land and Resource Management Committee was charged with examining the impacts of and solutions to urban sprawl in the state. The committee's findings were released on October 1, 2002, and can be found at [www.house.state.tx.us](http://www.house.state.tx.us). Regarding purchase of development rights (PDR), the following recommendation was made: "With the recent passage of the farm bill, and its unprecedented \$1 billion funding set aside for the protection of farmland, Texas should develop the framework to make PDRs an option to all interested parties in the future. Any PDR program should remain voluntary on the part of the landowner."

Over the last few months, AFT has been drafting a PDR bill. It has sought input and advice from the Texas Department of Agriculture and the Texas Parks and Wildlife Department, as well as from a variety of agriculture and conservation interests. Recently, the draft bill has been turned over to House sponsor Representative Charlie Geren (R-Ft. Worth), who will send it through legislative council for final drafting and will then file it. Representative Geren is currently selecting a Senate sponsor.

Two things are needed to establish a PDR program in Texas: a program structure and a funding source. Currently, landowners can sell their development rights to interested parties, but a state PDR program would establish a funding source and process for selling those rights.

### Results from November Voting:

#### Maryland County Approves Bond Question

Baltimore County voters approved Question J, 73 percent to 27 percent, authorizing a \$4.5 million bond to purchase agricultural conservation easements.

#### Minnesota County Gets Easement Purchase Bonds

Voters in Dakota County approved, 57 percent to 43 percent, Question 1 supporting the sale of \$20 million dollars in bonds to protect farmland, water, open space and natural areas from development. The resulting property tax increase would average \$17 per year for the median home (\$176,000) and will expire in 10 years.

The ballot question grew out of a two-year effort to develop a county land conservation program. County residents participated in a series of public planning meetings designed to prioritize natural and agricultural areas for protection. Forty-two thousand acres of farmland and 36,000 acres of private natural areas have been identified and mapped. County commissioners hope to protect 5,000 to 10,000 acres of that total, depending on land prices and the

county's ability to leverage state and federal funds. Dakota County is located directly south of St. Paul.

#### Local N.Y. Jurisdictions Approve Conservation Funding

Two jurisdictions in New York approved referenda to fund PACE acquisitions. Voters in the town of Clarence approved, 63 percent to 37 percent, a \$12.5 million bond for farmland development rights and open space. Voters in Saratoga Springs approved, 71 percent to 29 percent, a \$5 million bond to acquire farmland, environmentally sensitive areas and park land.

#### Present-Use Valuation in N.C. "Grandfathered" for Protected Parcels

On October 31, Governor Mike Easley signed an amendment to North Carolina's "present-use value" tax law. The changes allow easement-protected farmland to be taxed as agricultural land regardless of actual use. Normally, a farm must meet production and income requirements in order to be eligible for agricultural property tax assessment. Now, a farm that is subject to a permanent conservation easement need not remain in production to qualify, and will not be subject to rollback taxes if it goes out of agricultural use. The exemption only applies to parcels that previously qualified for agricultural property taxation.

#### Voters in Pennsylvania Boost Farmland Protection

Bond measures for farmland protection came under consideration in three jurisdictions. Bedminster voters approved, 77 percent to 23 percent, a \$2.5 million bond for acquisitions of open space, agricultural and conservation easements, property development rights, recreational and historic lands. Voters in Northampton approved, 65 percent to 35 percent, a \$37 million bond for watersheds, wetlands, farmland and parks. In Richland, a \$4 million bond to acquire open space, forest and agricultural easements and historic lands passed 58 percent to 42 percent.

Two jurisdictions approved earned income tax increases to fund farmland protection. Tinicum Township residents voted, 65 percent to 35 percent, to accept a 0.25 percent earned income tax increase and real estate tax increase of .02 percent to purchase open space, agricultural and conservation easements, property development rights, recreational and historic lands. Additional revenue expected from the tax increase is \$5 million. Voters in Richland accepted, 56 percent to 44 percent, a .1 percent earned income tax increase to acquire open space, forest and agricultural easements, and historic lands. Additional revenue expected from this tax increase is \$3 million.

—Joan Deely, Jesse Robertson-DuBois

# NORTH DAKOTA PROPERTY RIGHTS SURVEY

...on the use of easements to protect natural values, wildlife habitat, or other features. By using an easement to encumber some of the rights associated with a property, individuals can retain ownership of the land but receive financial compensation for agreeing to restrict land use. Although easements are popular throughout the nation, North Dakota is unique in having laws that limit their duration and constrain the ability of some groups to hold the easements they desire. This survey was commissioned to determine how North Dakota citizens view easements in the context of private property rights. Specifically, we wanted to learn the level of public support for conservation easements and the right of the landowner to determine the easement duration.

## METHODOLOGY

Responsive Management, Inc.  
Harrisonburg, Virginia

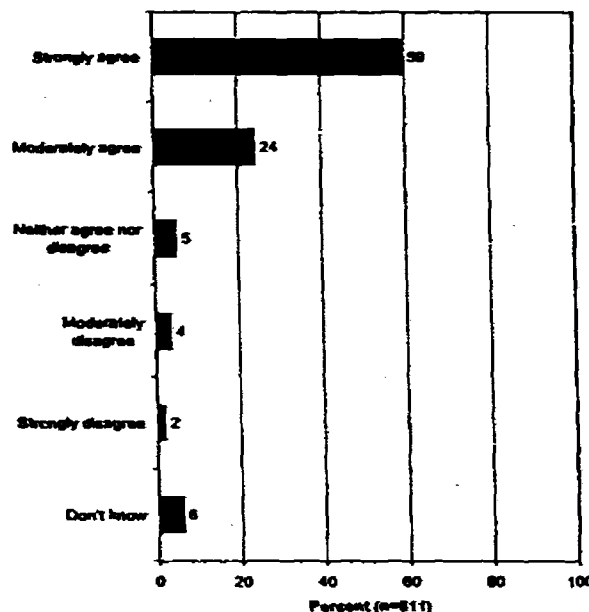
- Specialization and experience in natural resource surveys
- Telephone Survey of North Dakota adults
- Trained interviewers; calls monitored for quality control.
- Standards established by the Council of American Survey Research Organizations.
- Random digit dialing to ensure representative sample.
- Conducted January 7-13, 2003.
- Based on 511 completed interviews
- Sampling error no more than 4.33 percentage points.

Contact Information:

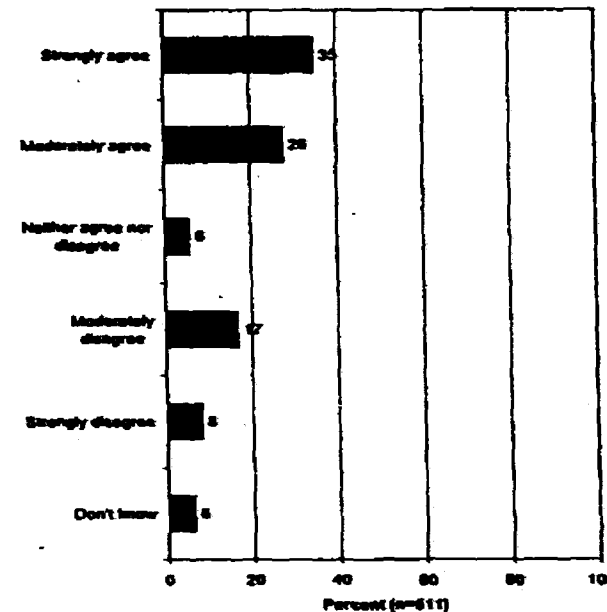
Ducks Unlimited, 701.355.3511

Visit [prairie.ducks.org](http://prairie.ducks.org)

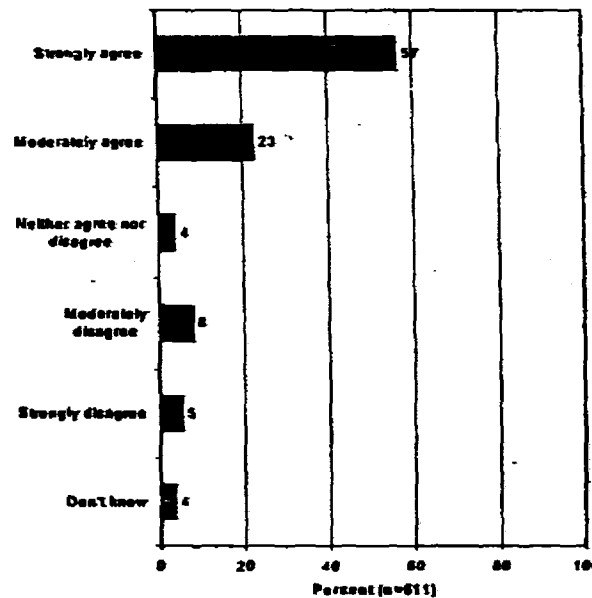
Q10. I am an advocate for private property rights. Do you agree or disagree with this statement?



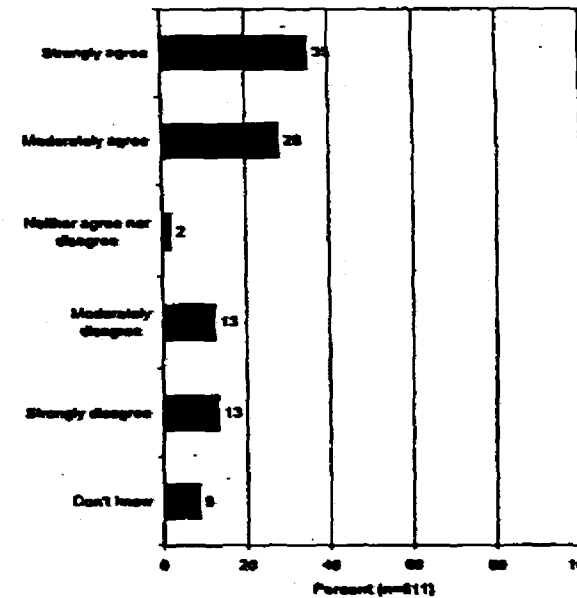
Q13. Landowners should be able to sell or give away certain property rights (like development rights) without regulation by the government. Do you agree or disagree with this statement?



Q11. North Dakota landowners should be able to sell their land to anybody they want without interference from the government. Do you agree or disagree with this statement?



Q15. I have heard of easements before, and I understand how they work. Do you agree or disagree with this statement?



SEE REVERSE

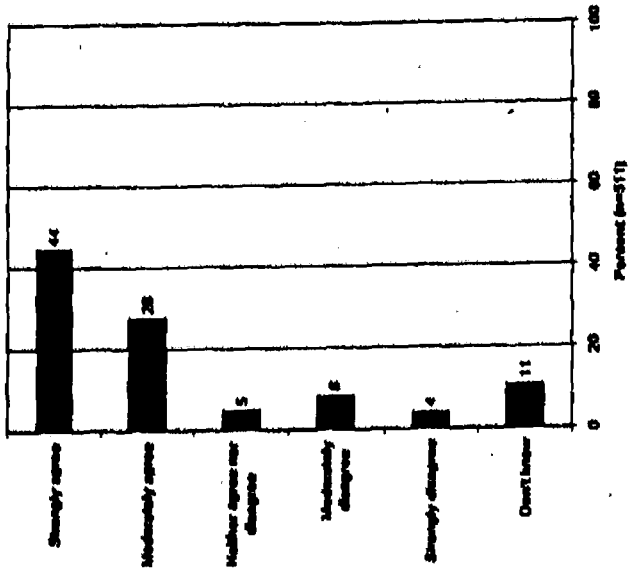
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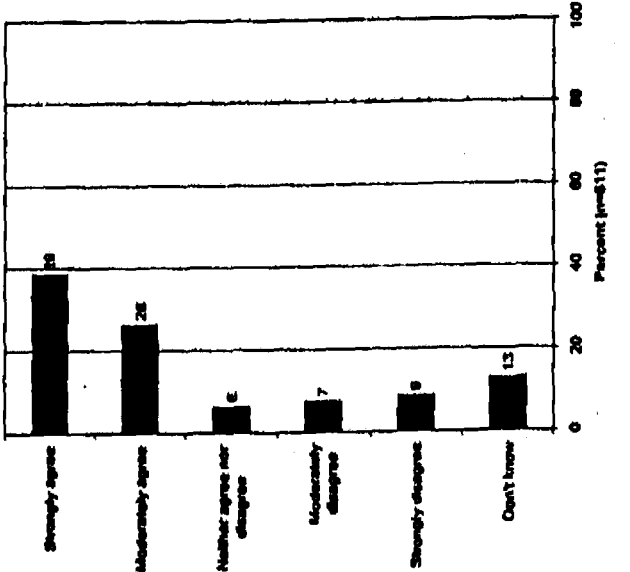
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Date

Method

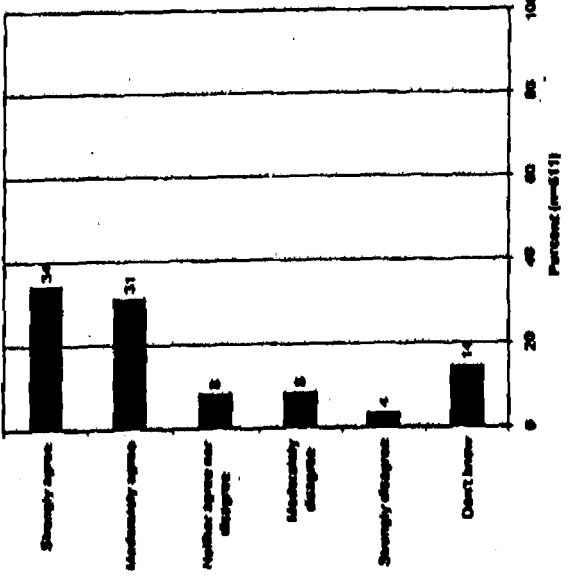
Landowners should be able to choose how long an easement will last on their own land, from a few years to forever. Do you agree or disagree with this statement?



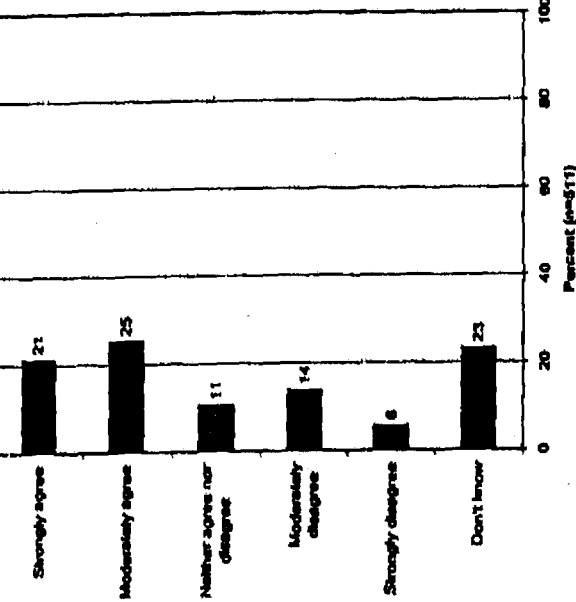
Q17. Landowners should be able to sell conservation easements that protect wetlands and grasslands on their land. Do you agree or disagree with this statement?



Q20. ND law prevents priv. landowners from entering into permanent land protection agreements with agric. land trusts and nonprofit cons. groups. Do you agree or disagree that this law is unfair b/c it interferes w/ owners' property rights?



Q22. ND law prevents priv. landowners from entering into permanent land protection agreements with agric. land trusts and nonprofit cons. groups. Do you agree or disagree that this law is unfair b/c it prevents landowners from being paid for easements?



Issue	Strongly agree (n=511)	Moderately agree (n=511)	Neither agree nor disagree (n=511)	Moderately disagree (n=511)	Strongly disagree (n=511)	Don't know (n=511)
Q10. I am an advocate for private property rights. Do you agree or disagree with this statement?	88	81	88	88	88	88
Q11. North Dakota landowners should be able to sell their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	77	78	84	100	79	79
Q12. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	88	82	88	88	88	88
Q13. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	88	81	87	88	88	88
Q14. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	88	81	88	88	88	88
Q15. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	88	72	76	88	72	88
Q16. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	76	86	88	88	88	88
Q17. Landowners should be able to sell or give away certain property rights in their land to anybody they want, without interference from the government. Do you agree or disagree with this statement?	88	73	87	88	88	88

Issue	Yes (n=511)	No (n=511)	Don't know (n=511)
Q20. ND law prevents priv. landowners from entering into permanent land protection agreements with agric. land trusts and nonprofit cons. groups. Do you agree or disagree that this law is unfair b/c it interferes w/ owners' property rights?	88	83	84
Q21. North Dakota landowners should be able to sell their land to anybody they want without interference from the government. Do you agree or disagree with this statement?	87	77	100
Q22. Landowners should be able to sell or give away certain property rights (like development rights) without regulation by the government. Do you agree or disagree with this statement?	71	80	88
Q23. I have heard of easements before, and I understand how they work. Do you agree or disagree with this statement?	70	88	88
Q24. Landowners should be able to sell conservation easements that protect wetlands and grasslands on their land. Do you agree or disagree with this statement?	72	83	88
Q25. Landowners should be able to choose how long an easement will last on their own land, from just a few years to forever. Do you agree or disagree with this statement?	80	70	72
Q26. Landowners who voluntarily donate easements for conservation purposes should receive a state tax benefit. Do you agree or disagree with this statement?	87	88	88
Q27. ND law prevents private landowners from entering into permanent land protection agreements with agric. land trusts and nonprofit cons. groups. Do you agree or disagree that this law is unfair to landowners b/c it interferes with owners' property rights?	84	88	100



**House Agriculture Committee, March 20, 2003**

**Chairman Nicholas and Members of the House Agriculture Committee.**

My name is Tim Mathern, I am the Senator from District 11 in Fargo and a sponsor of Senate Concurrent Resolution 4032. This resolution is important to long-term efforts to develop a cost effective response to devastating floods by use of permanent flood easements as a mitigation tool. This study resolution also offers us the opportunity to figure out how to permanently protect some of the State's most significant agricultural, open space, cultural, wildlife, and scenic areas.

**(Review Resolution)**

I have some handouts though which suggest to me that our citizens and farmers are loosing out on some important options. (3 Handouts, California ag losses, support of voters around the country, North Dakota survey).

There is skepticism to permanent easements as evidenced by the defeat of bills over the past few legislative sessions that would have authorized perpetual or permanent easements. My impression is that much of this relates to federal Fish and Wildlife easements done in the past years and continuing at the present time. Just because there is a law against perpetual easements doesn't mean they are not being done. It just means that these are happening without North Dakota law involvement. We need to have an understanding of all the options before us and move away from a limited reactive mode. The approach we need to take at this time is to do a thorough study of the issues and proceed accordingly in the next session.

I am concerned that we need to stay in charge of easements. Without moving to a structure like the Uniform Conservation Easements Act we are letting other forces control our future in the arena of perpetual easements. I am concerned that court action or citizen frustration will leave the legislature out of this important area of public policy. I am also concerned that our farmers and ranchers do not have the full set of tools available to them to keep their land in the family.

Stewardship of our land is good for us now and for future generations, easements are an integral part of our stewardship of the resources available to us. Lets study how this can be done to address the objections and the future possibilities.

I ask for your Do Pass recommendation for SCR 4032. Thank you for your attention and consideration.

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*Deanna Williams*  
Operator's Signature

10/23/03  
Date