

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF MINING, LAND AND WATER

**SEAN PARNELL, GOVERNOR**

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March 24, 2010

The Honorable Craig Johnson  
The Honorable Mark Neuman  
Co-Chairs, House Resources Committee  
State Capitol  
Juneau, Alaska 99811

Dear Representatives Johnson and Neuman:

Thank you for hearing House Bill 295, The University of Alaska Lands bill, in the House Resources Committee on Wednesday, March 17. I would like to address several of the concerns raised during that hearing.

First, let me assure you that the Department of Natural Resources (DNR) working with the University has thoroughly investigated the land status of all parcels on the land list. All of the parcels contained in HB 295 were included in the 2005 legislation (HB 130) passed by the legislature. After the 2005 legislation passed, DNR began the process to transfer lands to the University. This process included thorough land title research to confirm state ownership. In fact, at the time the Supreme Court issued an injunction barring further land transfers, DNR had already issued deeds for 30 of the 51 conveyable parcels and had prepared draft deeds for all of the other conveyable parcels. All of the land title issues raised at the March 17 hearing were addressed in that process.

The following are parcel specific issues and DNR's response.

Tenakee Springs lands. During the 2005 consideration of House Bill 130, the issue of the 1981 Settlement Agreement was specifically raised and addressed. The 1981 Settlement Agreement referred to by various Tenakee Springs residents and officials was settlement of a dispute between DNR and the City of Tenakee Springs regarding the city's municipal entitlement. In that agreement, DNR agreed to transfer certain state lands to the city and retain others in DNR ownership (rather than convey them to the city). The agreement needs to be considered in that context. This was not an agreement to retain these parcels in state ownership in perpetuity. Absent a legislative directive that these lands would be retained in perpetuity, DNR would not have such authority to have made that commitment.

*"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans."*

Frying Pan Lake. During the Legislature's consideration of this parcel in the 2005 legislative session, numerous local residents expressed concern about protecting the dog mushing trails that crossed this parcel. In response, DNR committed to working with the local trail users and the Mat-Su Borough to identify important trails, establish easements for these trails and then make the land transfer subject to those easements. This was done, and we believe the results were quite satisfactory to local trail users. If this parcel is conveyed to the University, these trail uses are protected.

Cleveland Peninsula – Sunny Bay. DNR objected to the transfer of this parcel to the City and Borough of Wrangell because it had been already committed to the University. The parcel was not discussed when DNR and the City and Borough of Wrangell representatives met several weeks ago to consider increasing the Borough's entitlement under House Bill 273. Those discussions focused on specific, discrete lands that the City and Borough identified for development or community uses. The City and Borough's interest in the Sunny Bay parcel is to prevent use and development of the parcel, while the University is more likely to put the parcel to an economic use.

Sitka – Biorka Island. Regarding the Native Allotment on Biorka Island, one Native Allotment is noted on Biorka Island. The allotment belonged to Mr. Walton Rudolph and was certified on May 5, 1921. Due to the location of the island and its importance to the military for communications and navigation, the allotment was condemned in 1940 and acquired for fair market value in July of the same year. This case is closed. There is no active 1906 Native Allotment case file in the Bureau of Land Management's records for Biorka Island. The only other private land ownership file in BLM's records for Biorka Island is a homesite application that was filed by Kathleen and Howard Taubeneck that was rejected on April 19<sup>th</sup>, 1951.

The issue of a Native Allotment claim was considered as part of the debate surrounding HB130 in 2005. At that time then Director Bob Loeffler responded to inquiries made by Representative Wilson in a letter dated March 7, 2005. In that letter the Director answered the question of the affect the University parcel would have on future actions taken by the heirs of Mr. Rudolph to reopen his Native Allotment file by saying that "...University ownership will not affect the fate of Mr. Walton's allotment. That fate rests with BLM."

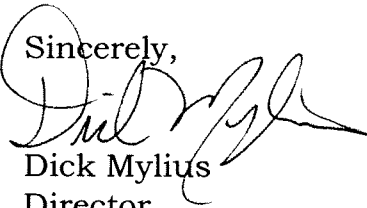
The FAA's navigational facility located on Biorka Island is on federal land that is adjacent to the state land proposed for transfer to the University. Maintaining the parcel under DNR management would provide no greater security for the FAA facility than transferring the parcel to University management.

Finally, I would like to address Don Bullock's concerns that were submitted in writing to Committee members during the hearing.

1. Style – “Generally needs edits to conform with the drafting manual and style of Alaska Statutes”. Much of the language contained in HB 295 is essentially the same as was contained in the 2005 legislation that was passed by the legislature, with modifications to remove the provisions that the Alaska Supreme Court found were unconstitutional. We agree that any edits necessary so that the bill conforms to appropriate drafting standards and style of the Alaska Statutes should be made.
2. Legal Substantive – “University land is state land”. This issue was first raised by Mr. Bullock in the House Community and Regional Affairs hearing on HB 295. Both the Department of Law and University believe that the Legislature has provided a statutory framework for the administration and disposition of University land, and therefore disagree with Mr. Bullock's interpretation of the Supreme Court's decision on this issue. See attached February 25, 2010 letter to Representatives Munoz and Herron from Assistant Attorney General Anne Nelson.
3. Legal Substantive – “policy as to Percentage”. As written, section 13 of the bill could be construed to apply only to University land proceeds in the form of lease rentals, royalties, royalty sale proceeds, and net profit shares from mineral leases issued on or before December 1, 1979, and bonuses from mineral leases issued on or before February 15, 1980. This interpretation would not capture all of the proceeds from the land to be conveyed to the University under this bill that are subject to the constitutional Permanent Fund contribution requirement. We agree that this section of the bill should be redrafted to accurately identify the proceeds from the land to be conveyed under this bill that are subject to the Permanent Fund contribution requirement. The University's counsel has submitted suggested language to address this issue.
4. Policy – The Legislature's purpose in passing the 2000 and 2005 legislation, and the intent behind HB 295, is to fulfill a commitment many believe was made at Statehood to more fully endow the University of Alaska with land. In addition to providing land that the University can use for educational purposes, the legislature has supported conveying appropriate parcels to the University because the University land office has better resources and fewer constraints than DNR to encourage the development of the land and resources.

We hope that the Committee will consider the bill again soon and pass the bill out of committee. Thank you for your consideration of this important legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Mylius", written over the word "Sincerely,".

Dick Mylius

Director

DNR Division of Mining, Land and Water

cc: House Resources Committee Members  
Don Bullock, Legislative Counsel  
Wendy Redman, University of Alaska  
Mari Montgomery, University of Alaska  
Jerry Gallagher, Office of the Governor  
Tom Irwin, Commissioner, DNR  
Anne Nelson, Assistant Attorney General  
Michael Ford, Assistant Attorney General  
Melanie Lesh, DNR Legislative Liaison

# STATE OF ALASKA

## DEPARTMENT OF LAW OFFICE OF THE ATTORNEY GENERAL

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February 25, 2010

The Honorable Cathy Munoz  
House of Representatives  
Co-Chair of House Community and Regional Affairs Committee  
State Capitol, Room 409  
Juneau, AK 99801-1182

The Honorable Bob Herron  
House of Representatives  
Co-Chair of House Community and Regional Affairs Committee  
State Capitol, Room 415  
Juneau, AK 99801-1182

*Re: Committee Substitute for House Bill 295(EDC)*

Dear Representative Munoz and Representative Herron:

At the close of the February 18, 2010 Community and Regional Affairs Committee hearing on House Bill 295, you requested a written response from the Department of Law to testimony by Legislative Counsel Donald Bullock. Mr. Bullock testified that CSHB 295 (EDC) failed to address the Alaska Supreme Court's decision in *Southeast Alaska Conservation Council v. State*<sup>1</sup> that prior University land grant legislation was unconstitutional. Mr. Bullock testified that under the Alaska Supreme Court's holding in *SEACC v. State*, the Board of Regents lack the authority to set policy regarding the administration and disposal of University land. We have reviewed Mr. Bullock's materials from the February 18, 2010 hearing, as well as his March 30, 2009 memorandum to Representative Ramras regarding "Alaska Supreme Court decision on the conveyance of lands to the University of Alaska (Work Order No. 26-LS0818)."

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<sup>1</sup> 202 P.3d 1162 (2009).

We disagree with Mr. Bullock's testimony. Article VII, section 2 of the Alaska Constitution states that the University "shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be administered and disposed of according to law." Article VII, section 3 of the Alaska Constitution empowers the Board of Regents as the governing body of the University, and states that "[t]he board shall, in accordance with law, formulate policy." In accordance with these constitutional mandates, the Legislature has established a statutory framework for administration and disposal of University land and University interests in land. Alaska Statute 14.40.170(a)(4) specifies that the Board of Regents "have the care, control, and management of all the real and personal property of the university" as well as land that would be conveyed under CSHB 295(EDC). This statute also requires that the Board of Regents "provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university." AS 14.40.170(a)(8). Furthermore, the Legislature has established specific requirements for administration of University land in various sections of AS 14.40 (*see, e.g.*, AS 14.40.291 (specifying that University land is not public domain land); AS 14.40.350 and .360 (authorizing the Board of Regents to administer federal University land grant land); AS 14.40.366 (requiring land development and disposal plans as well as public notice and comment for development, exchange, or sale of University land)). Additionally, the Legislature has specifically exempted University land from the Alaska Land Act (*see* AS 38.05.030(f)) and the requirements of AS 30.04 (*see* AS 38.04.005(f)). The validity of these statutes has not been challenged.

In *SEACC v. State*, the Alaska Supreme Court held that University land is state land and therefore generates revenue subject to Article IX, section 7 of the Alaska Constitution.<sup>2</sup> In reaching this conclusion, the Court relied in part on its 1981 decision that the Legislature has ultimate authority to dispose of University trust land,<sup>3</sup> but it must reconstitute the trust.<sup>4</sup> In deciding that University land is state land subject to the dedicated funds clause, the Court stated that:

[E]ven when the University has title to land, only the legislature can make laws effecting the disposal of land, not the Board of Regents. We further observed that the Alaska Constitution grants extensive powers to the legislature to control lands, which makes clear that the University lands received under the 1929 act 'belong' to the state. The

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<sup>2</sup> 202 P.3d at 1172.

<sup>3</sup> The University received two federal land grants in 1915 and 1929. This land was conveyed from the federal government to the state in trust for the University. This trust land was at issue in the Alaska Supreme Court's 1981 decision.

<sup>4</sup> *See State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

conclusion we reached in *State v. University of Alaska*, that University land is state land, applies even more readily to the present case because the University land involved here is not shielded by a federal trust obligation. Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion.<sup>5</sup>

In other words, the Court held that conveyance of state land to the University did not remove the land from the ultimate control of the Legislature, nor did it exempt University land revenue from the dedicated funds clause. The Court did *not* hold that University land must be managed under the same statutory framework as other state land, nor did the Court hold that the Legislature could not delegate to the Board of Regents the authority to develop policy for the day-to-day implementation of the University land program, including decisions regarding development and disposal of individual parcels. Because University land is state land, University land management practices must comply with the requirements of Article VIII, Natural Resources, of the Alaska Constitution. However, there is no basis for the conclusion that the Legislature may not enact separate laws governing the administration of University land, including delegation of day-to-day land administration responsibilities to the Board of Regents.

Sincerely,

DANIEL S. SULLIVAN  
ATTORNEY GENERAL

By: 

J. Anne Nelson  
Assistant Attorney General  
Attorney for the State of Alaska

Cc:

Gerald Gallagher, Legislative Director, Office of the Governor  
Tom Irwin, Commissioner, Department of Natural Resources  
Richard Lefebvre, Deputy Commissioner, Department of Natural Resources  
Richard Mylius, Director, Mining Land and Water  
Deborah Behr, Chief Assistant Attorney General  
Michael Ford, Assistant Attorney General  
Wendy Redman, Vice President, University Relations  
Larry Zervos, University General Counsel

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<sup>5</sup> *SEACC v. State*, 202 P.3d 1162, 1171 (Alaska 2009) (internal citations and quotations omitted).