

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 2, 2005

1:11 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Co-Chair
Representative Ralph Samuels, Co-Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Kurt Olson
Representative Paul Seaton
Representative Harry Crawford
Representative Mary Kapsner

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 130

"An Act granting certain state land to the University of Alaska and establishing the university research forest; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 130

SHORT TITLE: UNIVERSITY LAND GRANT/STATE FOREST

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/07/05	(H)	READ THE FIRST TIME - REFERRALS
02/07/05	(H)	RES, FIN
02/09/05	(H)	RES AT 1:00 PM CAPITOL 124
02/09/05	(H)	Heard & Held
02/09/05	(H)	MINUTE(RES)
02/14/05	(H)	RES AT 1:00 PM CAPITOL 124
02/14/05	(H)	Heard & Held
02/14/05	(H)	MINUTE(RES)
02/16/05	(H)	RES AT 1:00 PM CAPITOL 124
02/16/05	(H)	Heard & Held
02/16/05	(H)	MINUTE(RES)
03/02/05	(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

MIKE REEVES

Hollis, Alaska

POSITION STATEMENT: Testified on problems with HB 130.

ROBERT LOEFFLER, Director

Division of Mining, Land and Water

Department of Natural Resources (DNR)

Juneau, Alaska

POSITION STATEMENT: Testified in favor of HB 130.

JOE BEEDLE, Vice President for Finance

Chief Financial Officer and Treasurer Trustee

Land Grant Endowment Fund

University of Alaska

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 130.

MARY MONTGOMERY, Director

University Land Management Office

University of Alaska

Fairbanks, Alaska

POSITION STATEMENT: Testified in favor of HB 130.

PETE KELLY

University of Alaska

Fairbanks, Alaska

POSITION STATEMENT: Testified that the governor, not the university, selected lands for HB 130.

ACTION NARRATIVE

CO-CHAIR JAY RAMRAS called the House Resources Standing Committee meeting to order at 1:11:19 PM. Representatives LeDoux, Elkins, Ramras, Crawford, Seaton, and Olson were present at the call to order. Representatives Gatto, Samuels, and Kapsner arrived as the meeting was in progress. Representatives Bill Thomas and Peggy Wilson were also present.

HB 130-UNIVERSITY LAND GRANT/STATE FOREST

CO-CHAIR RAMRAS announced that the only order of business would be a work session for HOUSE BILL NO. 130 "An Act granting certain state land to the University of Alaska and establishing the university research forest; and providing for an effective

date." The committee will open HB 130 up to the public on Friday and try to vote it out on Monday, he added.

MIKE REEVES, Hollis, said there are problems with the HB 130 land selections in Hollis. He said he has informed DNR and Representative Elkins.

REPRESENTATIVE CRAWFORD referred to a letter from the Sitka Tribe stating that Lisianski Point and part of Biorca Island are under dispute. Part of the Biorca Island parcel was allotted to a Native family. It was condemned during WWII, and when the military was done with it, the land was given to the Federal Aviation Administration, he said. "These are lawsuits waiting to happen," he warned, and he suggested getting more land to the university from Southcentral Alaska. The areas in Southeast are controversial, and the bill should swap these lands with lands in Southcentral where people really want more private land, he added. He said strongly that he wants to move away from "these very, very controversial small sites in Southeast and get more land in Southcentral where there is a real desire to have more private land in private hands."

CO-CHAIR RAMRAS said that Representative Crawford asked if there is an interest in swapping controversial land in Southeast for land that is less controversial near the old capital site, and he asked the university if it was interested.

JOE BEEDLE, Vice President for Finance, Chief Financial Officer and Treasurer Trustee, Land Grant Endowment Fund, University of Alaska, Fairbanks, said the university "did not investigate that property--it was not on the list. There is a disparity difference in valuation today without a capital move concept supporting that particular area. Our value currently is in property in Southeast Alaska." He said he hesitates to show any interest but would like to hear what DNR has to say.

REPRESENTATIVE WILSON said the land Representative Crawford spoke of is in her district, and the Sitka Tribe of Alaska has been fighting over it for 80 years. "There are lawsuits and actions in the works," she said. "We all know that the federal government is slow on moving these issue," and she asked the committee to pull the disputed Biorca Island parcel.

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MS. MONTGOMERY said that the federal government has the authority to take Native allotments and entitlements and replace

them with federal lands. She stated, "We have never been able to stand in the way of Native allotments."

REPRESENTATIVE SEATON said he was pleased with the package that DNR has brought forward, especially dealing with trails and easements. He asked that the committee go through the resolution issues first.

CO-CHAIR RAMRAS said he wants to "take the temperature of the room and see where we're at."

REPRESENTATIVE ELKINS said the committee should compliment the university with the attempts to fix the Neets Bay and Kodiak Island issues, "but in reality, this whole thing is still very controversial." The conveyance is 260,000 acres and it will be matched with federal lands, he said, and if the legislature took out part of the 10,000 acres it will not affect the federal conveyance. If the bill omitted Kodiak, Neets Bay, Duke Island, Kelp Island, and Warm Springs Bay that would only withdraw 6,622 acres from the transfer and will have no impact on the amount of land the federal government will transfer. "We can eliminate a lot of heartache with our constituents," he said.

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MR. BEEDLE said easements, Native graves, and set backs will create a shrinkage of 10,000 acres that the university can't control. He said he didn't want "the first committee meeting to start releasing properties."

REPRESENTATIVE ELKINS said this committee has an obligation to the legislature and the citizens of the state to pass a good bill.

REPRESENTATIVE LEDOUX complimented the university and DNR in attempting to get things resolved, but she is not sure the proposed language for the Kodiak launch facility succeeds. She asked Mr. Beedle if there will be continued public use of this land, not just easements, "but horseback riding, fishing, hiking--the whole shebang."

MR. BEEDLE said "we would anticipate those uses to continue until such time that there is any kind of a plan that...would require us to come back to the Kodiak Island Borough." However, he said, there is an Interagency Land Management Agreement (ILMA) that has been negotiated between DNR and the Alaska Aerospace Development Corporation (AADC), which the university

cannot change. It will need to honor that, including security issues, he said. The university will be working with the AADC and the Kodiak Island Borough to resolve these issues, he added.

REPRESENTATIVE LEDOUX said she has not seen the ILMA, but she understands it allows the AADC to restrict public access for safety and to protect the assignee's improvements, and she is concerned that the university will interpret the language more stringently. She asked if the university would be willing to restrict the public only during launches and hazardous operations.

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MR. BEEDLE said "We will endeavor to do exactly as you ask, subject to those legal agreements."

MS. MONTGOMERY stated that HB 130 already says the public can use the land until the university develops it. She doesn't want to interpret it differently than the AADC. "We would rely on that decision and if we were in a dispute with AADC over access to the public, we'd go back to this decision ourselves." Putting it on the title, she said, would mean that it would continue even if the ILMA went away. If the city of Kodiak and the university decided to create a subdivision, "clearly the public couldn't continue to recreate on lands sold into private ownership."

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CO-CHAIR RAMRAS said he met with Representative LeDoux and he agrees with Representative Elkins that we should resolve this before the bill leaves the committee. He asked DNR what the bill offers the citizens of Kodiak other than a 90-day right of first refusal.

ROBERT LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), said that the state has a lease--the ILMA--with the Kodiak launch complex, so they have certain rights and obligations under that lease, which runs until 2024. Under the ILMA, he read, "Public access to state lands, tide lands and waterways shall not be blocked or restricted in any way on state land." He added that the launch facility may restrict public access through the parcel to protect public safety and the assignee's improvements, so DNR interprets that to mean the facility can only restrict access around the buildings or during a launch. He said the deed

restriction that the university wrote said the university will not materially change the lease without the approval of the Kodiak Island Borough. Mr. Loeffler said that he believes that for the next 19 years there will be no restrictions on public use except around buildings and during a launch. "I think that's very strong," he said.

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REPRESENTATIVE LEDOUX wants the university to confirm it and assure that the commitment "runs with the land."

MR. LOEFFLER said that since DNR does not prohibit access during the lease period, that is how the university will interpret it.

MR. BEEDLE added that there is a deed restriction which says that the university shall not make any material amendments to the ILMA without the written consent of the Kodiak Island Borough, although consent shall not be unreasonably withheld. "We're not wanting to change the agreement that exists or the uses that exist," he said.

REPRESENTATIVE LEDOUX said she is concerned that the ILMA talks about access to streams and waterways, but that is not what she is concerned about. She does not want just a pathway that gets someone from one place to another, but she wants public access all through the land, so people can continue to do what they have been doing for generations.

MR. LOEFFLER said he believes that that is the way DNR has been interpreting the lease.

REPRESENTATIVE ELKINS asked about the mapping error in the 80 acres near Hollis.

MR. LOEFFLER said DNR found an area in Hollis that was classified as watershed that was inadvertently put into the map. "I believe the 5th amendment would allow us to just revise that," he said.

REPRESENTATIVE CRAWFORD said he feels like a broken record, but he has voiced concerns about certain parcels, and he wants lands where people live and where people want private lands. He said the university could turn lands in Southcentral into cash relatively easy. There are sensitive areas in Southeast that people did not want to develop, and no follow up has been done

on that question, he said. He said his concerns were never even voiced in the DNR revision.

MR. LOEFFLER answered that the capital site was a question for the university, and that he does not have anything to add. Regarding Biorka Island, he said that he was not aware of the Native allotment issue, and a seal haul-out is two miles away from conveyance land. If the allotment is valid it will not go to the university, he added, and he is not aware of the Lisianski Peninsula issue. He promised to respond.

REPRESENTATIVE THOMAS said, "We should square up" the Tenakee Springs issue.

MR. LOEFFLER said there was a 17-acre parcel near the harbor that the town of Tenakee Springs was trying to lease from DNR. DNR put the discussions with Tenakee on hold "once we realized that this was going to go to the university," or had that potential. He said that with the prompting of Representative Thomas, DNR will allow Tenakee to apply for a lease, and DNR will adjudicate the application before the transfer is made. "I believe that problem is solved," he said.

REPRESENTATIVE THOMAS said the process has been in place, and he wanted to show in the record that it "wasn't politically done."

CO-CHAIR RAMRAS asked if the issues of the Tenakee parcels are resolved.

REPRESENTATIVE THOMAS responded in the affirmative, that the only concern of Tenakee Springs was the 17-acre parcel.

REPRESENTATIVE LEDOUX questioned the right of first refusal to Kodiak and the Neets Bay hatchery because there is a good chance the entities will not be able to afford to buy the land. Both parcels are listed as educational land, and the university has said it has no intention of selling the parcels. She asked if the university would accept a requirement of not allowing the university to sell those two parcels without consent of the legislature.

MR. BEEDLE said that attaching the right of first refusal diminishes the value of a parcel. A third party wanting to make a purchase would realize that it will do the work and then the first party could buy it. "By even offering [the right of first refusal] it detracts from the university's long-term efforts," he said. He added that Neets Creek is not educational property.

He said that the Kodiak parcel is for education, but there are auxiliary functions that include infrastructure. He said people like to own land if they build something on it, like hotels, restaurants, or other industries such as manufacturing. It is awkward, he said, to ask the university to go back to the legislature. It would be tying the hands of the university and it would not want that, he said.

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REPRESENTATIVE LEDOUX asked if the current conditions of the ILMA allow construction of hotels and such, and what effect that would have on public access.

MR. LOEFFLER said a lease is an agreement between two parties, and if both parties agree, they could do anything.

MS. MONTGOMERY said the ILMA would have to be amended and the Kodiak Island Borough would have to approve it. The university would have no right to develop the property without amending the ILMA, she said.

REPRESENTATIVE THOMAS asked why can't the university agree to drop selections based on a list of priorities since there is a 10,000-acre over selection. He said priorities would be Kodiak, Duke Island, and Kelp Bay.

CO-CHAIR RAMRAS said he comes from the school of thought that you go to buy a quarter-pounder hamburger, and the small print says that that is the weight prior to cooking. It doesn't end up be a quarter of a pound. He said the university will have easements and won't end up with the total acreage.

MR. BEEDLE said DNR already took the Hollis property off because of a mapping error, there are "17 acres mentioned by Tenakee," and the university has to recognize water rights, so there will be shrinkage of acreage. He said that many of the 90,000 acres for educational purposes will never make money. He said he thinks there will be diminishment outside of the easements that will account for that 10,000 acres. We are getting "170,000 acres, at best" of income property.

REPRESENTATIVE THOMAS said Klukwan Village was told it would get 23,040 acres, and "by the time they took eagle nests, the water, the creeks, the streams and buffers and easements all the way around, we didn't get that. I think we lost 3,000 acres or more

and we went back and said we didn't get 23,040 and they changed the rules too."

REPRESENTATIVE SEATON asked if lands are dropped from the bill will they still be available or do they go into protective status.

MR. LOEFFLER said that the lands would not go into protective status, and DNR management would continue as guided by area plans.

CO-CHAIR SAMUELS asked how many acres of protected parklands there are in Alaska.

MR. LOEFFLER said there are 3.2 million acres of parks in state land, and including federal lands there are 134 million acres.

CO-CHAIR SAMUELS asked for the acreage of Native corporation lands.

MR. LOEFFLER said there are 44 million of Alaska Native Claims Settlement Act (ANCSA) lands.

CO-CHAIR SAMUELS said so that is 178 million acres that can't be developed.

MR. LOEFFLER said much of the ANCSA land is developed.

CO-CHAIR SAMUELS asked what that leaves for private use.

MR. LOEFFLER said there are 104 million acres of state lands that "we have or will get," but a very small portion is in private ownership.

The committee took an at-ease from 1:59 p.m. to 2:04 p.m.

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REPRESENTATIVE WILSON said she has concerns about the land near Port Alexander and its watershed. The community's primary and secondary source of water is included in the transfer, she said, and because the primary water source fails in the winter, the community is dependent on both. Port Alexander has all its forest service and state permits, she added. The community is very concerned that HB 130 will jeopardize the watershed, and the water system is at maximum capacity and cannot handle new developments, she said. Representative Wilson also said that

DNR issues quitclaim deeds for the land so it does not require a land survey.

MR. LOEFFLER said the transfer to the university will be a quitclaim deed, and a survey is not required until the university sells it. If Port Alexander's water facilities are on state land, they should be under lease or permit from DNR. "I believe that we would use...a three-year title process to really resolve those questions," he said, and if the water rights need a survey, Port Alexander is responsible for that. He added, "Water rights are not surveyed; if they actually have a physical easement sometimes they are...it depends on the survey. We typically work with communities and try to make it inexpensive for them if we can."

REPRESENTATIVE WILSON said the community would feel better if it can be put in writing.

MR. LOEFFLER said he would be very happy to put that in writing.

REPRESENTATIVE WILSON said she is not sure, but she thinks that is helpful.

MR. LOEFFLER said DNR takes its commitments to the legislature very seriously.

REPRESENTATIVE WILSON said she is also concerned about Baranof Warm Springs. She noted the springs flow from 9 primary fissures in a close grouping. She said it is similar to Tenakee where they do not allow blasting within 20 miles in hopes of protecting the springs. She said that Sitka is in the process of working on a blasting limit for the Baranof Warm Springs, because people are afraid a disturbance will create a fissures shift, and the warm springs could completely disappear. "This is a very critical issue for that area," she said.

MR. LOEFFLER said if Sitka passes a law or ordinance, the university and the state must respect it.

REPRESENTATIVE WILSON said the residents depend on Baranof Lake and River for their fresh water. The lands are non-percolating so any disturbance will create unsafe, polluted water in their drinking supply. She said she thinks the parcel should be pulled entirely.

CO-CHAIR RAMRAS asked if Representative Wilson wants the land eliminated from the bill.

REPRESENTATIVE WILSON said yes.

CO-CHAIR RAMRAS said that brings us back to square one because that is what people want for Neets Bay, Tenakee, and the Kodiak parcel, "which the university has already stated is not in their interest to extract lands."

REPRESENTATIVE CRAWFORD added Lisianski and Biorka.

CO-CHAIR RAMRAS said the most valuable land is precisely the land that communities want extracted because they don't want to pay for it and they don't want anyone else to have it. "This is not in my back yard."

REPRESENTATIVE THOMAS said the Tenakee request wasn't his doing; the community had a prior commitment.

PETE KELLY, University of Alaska, said HB 130 is the governor's bill, and the university is just receiving these lands from the governor. The selection was made by the administration, he said. The university will work with the people, but the university is just a recipient.

REPRESENTATIVE THOMAS said that the governor did not hold any public hearings, so the legislature is here for the people.

MR. KELLY said this is the public hearing, and according to the constitution there is no higher level of public process.

REPRESENTATIVE SEATON noted Section 6, concerning public notices, and he asked why the public notice time drops from 60 days to 30 days.

MR. KELLY said he did not know.

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MR. BEEDLE said that the university usually honors a very long-term public notice process through its annual plans. "There's literally hundreds of examples of things that come up where a long notice is a challenge for a current market situation. Private sectors and municipalities are not required to do more than a 30-day notice." He said over 90 percent of university sales will be 60 days. He added that the 30 days is the notice period and then it takes additional time to compile the comments and report them to the regents, "so most cases it will extend

beyond 30 days, but we don't want to be limited." He said there are many occasions where people cannot wait for the use of a property.

REPRESENTATIVE SEATON asked if the university has experienced a problem with the existing 60-day notice period.

MR. BEEDLE said that section is specifically dealing with land that is in Senate Bill 7, and the university has not received land under SB 7. He added that the former laws required a 30-day notice without problems.

CO-CHAIR RAMRAS said the initial land selection process is cloaked in mystery and he asked who did it.

MR. LOEFFLER said it was his staff, himself, and deputy commissioner Marty Rutherford. He said that he was at all the meetings and "there was a conversation with the university."

CO-CHAIR RAMRAS asked how DNR thought the communities would react.

MR. LOEFFLER said he understood that the Southeast selections would be controversial.

CO-CHAIR RAMRAS said, "We all can sense the intrinsic value of these parcels otherwise communities wouldn't be objecting to some of their best land that is presently in public hands, seeing the process go through the pipeline to a private sale."

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REPRESENTATIVE ELKINS said to keep working.

CO-CHAIR RAMRAS said the land transfer is a good thing but we need to minimize the impact to the communities.

REPRESENTATIVE SEATON wanted to clarify that the committee was comfortable with the resolution page and the solution for Section 6--the municipal entitlement.

CO-CHAIR RAMRAS said he thought Representative Seaton was comfortable with those and that they were "largely your objections."

REPRESENTATIVE SEATON said he wanted the sense of the committee as well.

REPRESENTATIVE THOMAS asked Mr. Loeffler that since he anticipated controversy, did he have other lands as back up. He said there is lots of land around Haines.

MR. LOEFFLER said knowing the university felt that they needed high-quality land to turn into income, DNR had to offer land in Southeast. He added that he focused on lands that were in a development category, and the vast majority of lands were drawn from that category.

REPRESENTATIVE THOMAS said that DNR gutted Southeast and took away the incentive to form organized boroughs, and he asked that the message be given to the body who demands the formation of boroughs.

REPRESENTATIVE LEDOUX said she wanted to make clear she is not comfortable with easements for the Kodiak lands.

REPRESENTATIVE ELKINS said we have taken big steps and that is a compliment to the university.

REPRESENTATIVE WILSON asked that if DNR's land classifications will apply when the university owns it.

MR. LOEFFLER answered that DNR's rules do not apply to university land.

CO-CHAIR RAMRAS replied that once the lands go to the university it is private land, and the expectation is that the university will sell the property to other private landowners. "There are 134 million acres of lands in the State of Alaska, excluding Native lands that people don't have access to. This is 260,000 acres, and we're contesting some of the more valuable land that can go into private hands, but, frankly, that is what is suppose to happen in this country and this state. Land is supposed to move from public hands into private hands," he said. He added that no one is proposing a Wal-Mart on the Kodiak launch site.

REPRESENTATIVE SEATON said he doesn't think the university will sell all the land; it may be leased or held for research. He said there is nothing in the university plan that says it will sell quickly.

REPRESENTATIVE CRAWFORD said he is resentful, and the committee members didn't think that the university was about to sell to a Wal-Mart. "I don't think that any of us here are trying to stop

this bill...I would like to see that every last acre that goes to the university is something that can be turned into cash. I want to see the university have something that, at the end of the day, is worthwhile." He said he doesn't want to give the university land that will cause lawsuits. "I want to see every bit of this be high-value land that's going to make the university something that they can put into education."

REPRESENTATIVE CRAWFORD said the bill should have more land with high-value gas potential, and include land in Southcentral "where people are crying for private property." He questioned why the committee has to do exactly what the governor has laid down. "We can make some independent decisions on our own," he said. Common sense should account for something, he said, so weed out the more controversial selections before they become a problem.

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CO-CHAIR RAMRAS replied that the university should look at more restrictive deeds "because I don't have a problem with the land that they selected." He added that the challenge is the bill has to move through house resources, house finance, and then the Senate. "I think we are giving DNR and the university ample time to work this out," he said. He added that the committee is patient. "I feel that we have dedicated a lot of the committee's valuable time to this process." He thanked the university and DNR for being cooperative. He said Alaskans share a special bond to a beautiful state, and the committee will take public testimony on Friday and he anticipates it will pass HB 130 out of committee on Monday.

[HB 130 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:32 p.m.