

**ALASKA STATE LEGISLATURE**  
**HOUSE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE**

February 18, 2010

8:11 a.m.

**MEMBERS PRESENT**

Representative Bob Herron, Co-Chair  
Representative Cathy Engstrom Munoz, Co-Chair  
Representative John Harris  
Representative Sharon Cissna  
Representative Berta Gardner

**MEMBERS ABSENT**

Representative Wes Keller  
Representative Charisse Millett

**COMMITTEE CALENDAR**

HOUSE BILL NO. 295

"An Act relating to the grant of certain state land to the University of Alaska; relating to the duties of the Board of Regents; relating to deposits made to the Alaska permanent fund received from certain lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior conveyances of land to the University of Alaska; making conforming amendments; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 295

SHORT TITLE: UNIVERSITY LAND GRANT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	EDC, RES, FIN
01/27/10	(H)	CRA REFERRAL ADDED AFTER EDC
01/29/10	(H)	EDC AT 8:00 AM CAPITOL 106
01/29/10	(H)	Heard & Held
01/29/10	(H)	MINUTE(EDC)
02/05/10	(H)	EDC AT 8:00 AM CAPITOL 106
02/05/10	(H)	Heard & Held
02/05/10	(H)	MINUTE(EDC)
02/08/10	(H)	EDC RPT CS(EDC) 1DP 3NR

02/08/10 (H) DP: P.WILSON  
02/08/10 (H) NR: BUCH, EDGMON, MUNOZ  
02/08/10 (H) EDC AT 8:00 AM CAPITOL 106  
02/08/10 (H) Moved CSHB 295(EDC) Out of Committee  
02/08/10 (H) MINUTE(EDC)  
02/18/10 (H) CRA AT 8:00 AM BARNES 124

**WITNESS REGISTER**

DICK MYLIUS, Director  
Division of Mining, Land and Water  
Department of Natural Resources (DNR)  
Anchorage, Alaska

**POSITION STATEMENT:** Presented HB 295 on behalf of the administration.

KEVIN SAXBY, Senior Assistant Attorney  
Natural Resources Section  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** During hearing of HB 295, answered questions.

MARI MONTGOMERY, Director  
Land Management Office  
Finance & Administration  
University of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** Expressed her hope that HB 295 is forwarded from this committee.

TIM LYDON  
Juneau, Alaska

**POSITION STATEMENT:** During hearing of HB 295, urged the committee to remove the Sumdum parcel.

NORM CARSON, President  
Pelican Chamber of Commerce  
Pelican, Alaska

**POSITION STATEMENT:** During the hearing of HB 295, urged the committee to remove the Mite Cove parcel.

ERIC LEE, Fisherman  
Petersburg, Alaska

**POSITION STATEMENT:** During the hearing of HB 295, urged the removal of the Read Island and Whitney Island parcels.

ART BLOOM, Vice Mayor, Member  
Tenakee Springs City Council  
City of Tenakee Springs  
Tenakee Springs, Alaska

**POSITION STATEMENT:** During the hearing of HB 295, expressed concern with the selection of the harbor uplands and Indian River parcels in Tenakee Springs.

MARY IRVINE  
Juneau, Alaska

**POSITION STATEMENT:** Expressed interest in removing the Sumdum parcel from HB 295.

AL RUEBEN, Member  
Tenakee Springs City Council  
Tenakee Springs, Alaska

**POSITION STATEMENT:** Expressed support for removing the harbor uplands in Tenakee Springs from HB 295.

DONALD BULLOCK, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** Reviewed legal issues with HB 295.

#### **ACTION NARRATIVE**

[8:11:17 AM](#)

**CO-CHAIR CATHY ENGSTROM MUNOZ** called the House Community and Regional Affairs Standing Committee meeting to order at 8:11 a.m. Representatives Munoz, Herron, Harris, and Gardner were present at the call to order. Representative Cissna arrived as the meeting was in progress.

#### **HB 295-UNIVERSITY LAND GRANT**

[8:11:28 AM](#)

**CO-CHAIR MUNOZ** announced that the only order of business would be HOUSE BILL NO. 295, "An Act relating to the grant of certain state land to the University of Alaska; relating to the duties of the Board of Regents; relating to deposits made to the Alaska permanent fund received from certain lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior

conveyances of land to the University of Alaska; making conforming amendments; and providing for an effective date." [Before the committee is CSHB 295(EDC).]

[8:13:09 AM](#)

DICK MYLIUS, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), explained that HB 295 was introduced by the governor to address problems that occurred with the passage of the 2005 legislation that gave the University of Alaska 250,000 acres of state land. This legislation only transfers about 200,000 acres, which are exactly the same lands as in the 2005 legislation. This legislation fixes a provision in the 2005 legislation that caused the legislation to be found unconstitutional. The provision required the money from the lands given to the university be deposited into the University Land Endowment. A subsequent lawsuit over the issue of dedicated funds ultimately resulted in the Supreme Court overturning the entire land conveyance because it found the provision to be unconstitutional.

MR. MYLIUS informed the committee that the University of Alaska is a land grant college. Every state has one land grant college, which began with land provided to it by the federal government. The notion was to provide land to the university in order to allow the land to be used for revenue or educational and research purposes. The University of Alaska's original grant was given in two chunks in 1915 and 1929. Under those grants the university received 110,000 acres, which was the second smallest land grant ever given to a university. One discussion during statehood was what sort of land grant should be given to the state and whether some of that land should be given to the University of Alaska. Although some of the earlier versions of the statehood legislation included specific land grants to the university, the final land grant to the state was all given to the state not as trust lands or dedicated to any specific group. Therefore, there was no provision in the Statehood Act to give specific lands to the university. However, the university felt it was owed land from the federal government, land that was given to the state. The aforementioned has led to the university advocating for many years that it should receive a share of the state's land grant. Beginning in 1959, there were various attempts to pass university lands legislation. Every legislative session from 1993-2000 considered university land conveyance legislation, of which three passed the legislature and three were vetoed by the

governor. In 2000 the governor's veto of the university land conveyance legislation, Senate Bill 7, was overridden by the legislature. The aforementioned resulted in a lawsuit regarding whether overriding the governor's veto of Senate Bill 7 required a two-thirds or three-quarters vote. The governor argued that it was appropriations legislation while the legislature argued that it wasn't. The case went to the Alaska Supreme Court, which ruled in favor of the legislature and upheld the legislature's override of the governor's veto of Senate Bill 7. Therefore, the legislation passed in 2000 went into effect in 2004 and gave the university 250,000 acres of land without specifying which lands would be given to the university. The legislation established a fairly contentious process between the university and DNR to determine which lands the university would receive. Furthermore, the restrictions in the legislation regarding what lands the university could not get significantly limited the pool of lands available. Recognizing the aforementioned, DNR and the university presented to the legislature a list of lands totaling 250,000 acres, which the legislature was asked to approve in 2005 in the form of House Bill 130. House Bill 130 was passed by the legislature and approved by the governor. At this point, more than half of the parcels under House Bill 130 have been transferred to the University of Alaska. However, the Southeast Alaska Conservation Council (SEACC) brought a suit over the dedicated funds clause. Finally, after several years, the Supreme Court ruled in March 2009 that House Bill 130 violated the dedicated funds clause. The court further stated that the trust provisions couldn't be separated from the land provisions, and therefore the court invalidated the entire legislation with one exception and required the university to return the parcels that DNR had already conveyed to it. The parcel the court allowed the university to keep is referred to as the research forest, which is land that the university, the federal forest service, state forest service, and others use for research. This parcel is in the Tanana Valley State Forest and was specifically set aside as research/educational property and included a restriction against the university selling the parcel for at least 50 years. This parcel accounts for the difference in acreage amounts between HB 295 and House Bill 130.

[8:20:13 AM](#)

MR. MYLIUS explained that HB 295 fixes the dedicated funds provision by specifically stating that the revenue from the lands given to the university are considered university receipts and are deposited into the general fund for the legislature to

appropriate as it sees fit. The remainder of the legislation is basically intact from the 2005 legislation. In fact, the legislation includes language that refers to the list of lands book, which is exactly same. He informed the committee that the legislation before it proposes to convey the following: 29 parcels in Southeast Alaska, 5 parcels in South Central Alaska, and 18 parcels in the Interior. The legislation specifically excludes nine parcels in Southeast Alaska, which were withdrawn by the legislation in 2005 due to public concerns. There are also nine other parcels in Wrangell, Petersburg, and Pelican that are on hold due to land selections by or formation of boroughs. The aforementioned provision had to be changed a bit because the provision in 2005 placed those parcels on hold pending formation of a borough. In the case of Wrangell, a borough has formed and thus has a municipal entitlement. The legislation before the committee also includes specific language that addresses the 2009 Supreme Court ruling by directing the revenue to the general fund. He noted that two small parcels near Fairbanks had been conveyed under different authorities, one of which was a small parcel held by the Department of Transportation & Public Facilities (DOT&PF).

[8:22:39 AM](#)

MR. MYLIUS highlighted that the intent of CSHB 295(EDC) was to swap two parcels. Although in 2005 the legislature withdrew a parcel around Pelican, recent testimony in the House Education Standing Committee related that Pelican residents preferred that the Mite Cove parcel be dropped and part of the parcel that had previously been dropped was offered in exchange. However, the amendment to effectuate the aforementioned change didn't actually accomplish it, and thus this committee will need to address that.

[8:23:30 AM](#)

MR. MYLIUS, in response to Co-Chair Munoz, explained that CSHB 295(EDC) substituted the Pelican parcel for the Mite Cove parcel in the incorrect part of the legislation. In terms of the list of lands proposed for conveyance, DNR and the university focused on lands that were either identified for development or could be transferred to municipalities, if they were in DNR ownership. Those lands included public recreation lands because municipalities can acquire recreation lands under the municipal entitlement statutes.

[8:24:57 AM](#)

MR. MYLIUS explained that the landless parcels don't include parcels proposed for future state park lands. Furthermore, no parcels are in legislatively designated areas, except the aforementioned Tanana Valley Forest parcel. In Southeast Alaska, the timber parcels selected were minimized because there was concern regarding how it would impact the state's timber program.

[8:25:31 AM](#)

MR. MYLIUS, in response to Co-Chair Munoz, explained that on pages 8-9 subsections (o), (p), and (q) refer to the possible formations of boroughs in Petersburg, Wrangell, and the northern Southeast area. Those provisions require that parcels not be conveyed to the university until the municipal entitlements are addressed.

CO-CHAIR MUNOZ asked if the Mite Cove parcel is included in CSHB 295(EDC).

MR. MYLIUS related that the intent of the House Education Standing Committee was to withdraw the Mite Cove parcel. However, that wasn't accomplished. In order to withdraw the Mite Cove parcel, it should've been listed in subsection (n) on page 9 with the other nine parcels being withdrawn from the list. In further response to Co-Chair Munoz, Mr. Mylius confirmed that the aforementioned needs to be included in a future CS. To that end, he said he had provided committee staff with an amendment to do so.

[8:27:38 AM](#)

MR. MYLIUS, referring to the landless book provided to the committee, clarified that it contains the exact list of lands that were presented in 2005. The book is divided into geographic areas and the parcels are listed in geographic order. Although the parcels the legislature withdrew from the list in 2005 are still included, those lands are identified as "deleted by the legislature." The amendment made in the House Education Standing Committee inserted part of another parcel. He related that DNR doesn't encourage reviewing entirely new parcels of land because [the list] has already been thoroughly vetted. In the case of Pelican, it offered to insert part of a parcel that was taken out in 2005, which the department felt was appropriate since the parcel had been previously identified.

[8:29:58 AM](#)

REPRESENTATIVE HARRIS surmised that the intent of HB 295 is to convey lands to the university so that it has a revenue source to operate the university.

MR. MYLIUS replied yes, adding that there are parcels to generate revenue as well as educational parcels. In further response to Representative Harris, Mr. Mylius confirmed that the intent is to provide the university with more land so that it can expand its operations and/or earn revenue to avoid general fund appropriations to the university.

[8:31:07 AM](#)

REPRESENTATIVE HARRIS, referring to Section 12 on page 14 of CSHB 295(EDC), asked if any consideration had been given to the university receiving the revenues from its lands that generate oil and gas revenues rather than depositing it into the permanent fund dividend (PFD).

MR. MYLIUS related his understanding that the aforementioned would require a constitutional amendment because these lands [with mineral lease rentals, royalties, royalty sale proceeds, and net profits under AS 38.05.180(f) and (g)] are considered state lands in that context. He noted that it only applies to mineral revenues, and therefore any land leases or sales aren't subject to that provision.

REPRESENTATIVE HARRIS surmised then that the situation is difficult since the university needs revenue, but the legislature can't take funds from the PFD to give to the university.

MR. MYLIUS indicated agreement, but deferred to the Department of Law (DOL) representative.

[8:33:17 AM](#)

KEVIN SAXBY, Senior Assistant Attorney, Natural Resources Section, Department of Law, noted his agreement with Mr. Mylius' comments. He added that the Alaska Supreme Court said that these are state lands, and therefore fall under the same constitutional provisions under which other state lands fall.

[8:33:37 AM](#)

CO-CHAIR MUNOZ related her understanding that 50 percent of the revenue generated from other state lands is deposited into the PFD.

MR. MYLIUS said that the constitutional requirement is currently 25 percent, but he noted the legislature has changed it various times.

[8:34:10 AM](#)

CO-CHAIR HERRON inquired as to the public hearing process with the university land grant [list].

MR. MYLIUS explained that although there was no public process during the development of the land use list, the land use designations within the land use plans were utilized. The land use plans, he said, go through a thorough public process. The pool of lands [from which DNR selected] were either lands that had been identified as settlement, general use, or public recreation land. The public recreation lands, under the Municipal Entitlement Act, were lands that could go to municipalities and thus DNR felt it appropriate for those lands to be considered for selection by the university. Mr. Mylius said that DNR relied upon the legislative process in 2005 for the public input. That legislative process resulted in nine parcels being withdrawn [as specified in HB 295].

[8:35:23 AM](#)

CO-CHAIR HERRON asked if DNR and the university has identified parcels to substitute for any withdrawn parcels, especially given the fact that it probably makes sense for that the university needs 200,000-250,000 acres in order to have an appropriate revenue stream.

MR. MYLIUS replied no, adding that DNR didn't want to enter into a situation in which it was adding and withdrawing parcels. Therefore, it was determined that it would be an easier process if it was a final list. The intent in 2005 was not to change the list; however he acknowledged that it's the legislature's prerogative to do so. Mr. Mylius pointed out that although the state has a large amount of land, the best land to generate revenue is small. He opined that it's not an easy process to select 250,000 acres of land that's consistent with the university's land use plans, isn't controversial, and will generate revenue. Furthermore, DNR has to consider how selected lands will impact the timber program in Southeast Alaska,

recreational concerns, and can't select oil and gas producing properties. The aforementioned considerations results in a fairly limited group of parcels that can be transferred to the university and generate revenue for it.

8:37:40 AM

CO-CHAIR HERRON inquired as to why it's in the state's best interest not to give the university some oil and gas revenue stream.

MR. MYLIUS clarified that the rule was that the university couldn't select producing oil and gas properties. He reminded the committee that the 2005 legislation directed revenues to the University Endowment Fund, which was out of the control of the legislature. Furthermore, 80-90 percent of the state's revenue in the general fund comes from oil and gas revenues. The concern was from the governor, who [Governor Knowles and Governor Murkowski] didn't support the university holding producing oil and gas lands because they are fundamental to the state's revenue generation. However, the university did select the Nenana oil and gas property, which is a prospective natural gas property, and it's still in the legislation. The Nenana oil and gas property is the one of the highest potential oil and gas areas of the state that isn't producing oil and gas now.

8:40:03 AM

REPRESENTATIVE HARRIS inquired as to how much land the federal government owes the university.

MR. MYLIUS specified that the federal government owes the university approximately 6 million acres. In the last 4 years, the university has received 8.5 million acres from the federal government. In further response to Representative Harris, Mr. Mylius related that the federal government has a few hundred acres to transfer under the Alaska Mental Health grant. The remainder of the lands to be transferred to the university fall under the statehood grants.

8:40:58 AM

REPRESENTATIVE HARRIS surmised then that if the state faces revenue shortfalls, the university won't likely rate high on the list for revenues from the state.

MR. MYLIUS explained that since the revenue from the university's lands will be deposited into the GF, it will be left to the legislature to determine whether revenue the university generates will return to the university or not. With the exception of the Nenana parcel, the lands the university has selected are lands that would result in land sales or support various forms of commercial or recreational activities and possibly port development. He mentioned that there is one prospective coal site at Jarvis Creek. Therefore, because the university is selecting lands that aren't oil and gas producing parcels, those lands could earn revenue regardless of what happens with oil and gas parcels in the state.

REPRESENTATIVE HARRIS asked if it would be fair to say that the psyche of governors is such that they want to determine how the funds are spent in terms of all the services the state offers. Therefore, if funds are basically dedicated to the university, it would preclude those funds from being spent on other services the state may offer.

MR. MYLIUS replied yes, but he reiterated that under the current legislation it would be left to the legislature to decide whether the funds earned from the land would return to the university or be utilized elsewhere.

[8:43:31 AM](#)

REPRESENTATIVE GARDNER recalled when the original university land grant legislation went through the legislature, the governor made it clear that he wanted the legislation to proceed as written. Therefore, she said she was surprised to hear that the public process for the university land grant legislation was the legislative process because for the public process to be meaningful, one has to expect some changes. She then questioned whether it has been a problem/surprise that there have been changes following the legislative public process.

MR. MYLIUS said it wasn't a surprise because the department knew that it couldn't develop a 250,000-acre land list that wasn't controversial. The aforementioned is why DNR and the university went forward with the specific land list. The 2000 legislation basically said that DNR and the university would work out the land selections, which would've been a long contentious process. He noted that there was no public process specified in that 2000 legislation either.

[8:45:41 AM](#)

MARI MONTGOMERY, Director, Land Management Office, Finance & Administration, University of Alaska, reminded the committee that in 1915 and 1929 the federal government granted about 360,000 acres of surveyed lands to the university. At statehood, only about 100,000 acres of that land had been surveyed by the federal government and conveyed to the university. The Statehood Act extinguished the university's ability to receive the balance of the aforementioned federal grant. Since that time there have been repeated efforts to secure additional lands for the university. Only Hawaii and Delaware have smaller university land grants. In many states, the land grants were only for universities. Ms. Montgomery pointed out that the passage of this legislation certainly isn't going to fund the university. Therefore, she opined that these lands aren't really a mechanism to fund the university but rather is a mechanism to allow the university to have ownership and control of several educational properties and other lands that could be used to expand or modify existing campuses. However, she did acknowledge that the lands would provide the opportunity to generate additional receipts that could be used for various uses and programs throughout the state, if the legislature chose to do so. Ms. Montgomery related that the university appreciates the committee's review of HB 295 and hopes that it's forwarded with a favorable recommendation.

[8:48:44 AM](#)

CO-CHAIR HERRON asked if the 250,000 acres being requested is appropriate for the size of the University of Alaska in relation to other states.

MS. MONTGOMERY pointed out that the university's current grant is just over one-tenth of 1 percent of the overall state land grant, which is small comparatively speaking. However, the university land grant varies throughout the nation. She opined that one would expect the University of Alaska to have a much larger land grant than it has. Furthermore, even the 250,000 acres is viewed by the university as a relatively small land grant.

[8:50:29 AM](#)

CO-CHAIR HERRON inquired as to why the university would sell a parcel for a one-time payment.

MS. MONTGOMERY informed the committee that to date the university has sold about 18,000 acres, which is a small amount. She explained that by law the money from the federal land grant is deposited in a permanent fund; it helps to build up that endowment, the proceeds from which fund the Alaska Scholars program among other things. Furthermore, those proceeds can be used to purchase properties adjacent to a campus, which has been done in Anchorage.

[8:52:18 AM](#)

CO-CHAIR HERRON asked if, in the university's opinion, the original selection process by DNR and the governor at the time was arbitrary. He further asked if DNR and the governor at the time understood the desire for a vibrant university.

MS. MONTGOMERY said she was sure that DNR didn't view it as arbitrary as it surely had a lot to consider throughout the process. Although the list could be better, it would, as Mr. Mylius indicated, likely bring in a different set of controversy. Ms. Montgomery said although it would be nice to have a better list of lands, she didn't believe there was any malicious intent to give the university a bad list of lands.

[8:54:54 AM](#)

TIM LYDON informed the committee that the Sumdum parcel is a 5-acre parcel in Endicott Arm, located about 50 miles south of Juneau. Geographically, the Sumdum parcel is almost in the center of the Tracy Arm-Fords Terror Wilderness and Chuck River Wilderness complex, which is about 730,000 acres of designated wilderness. The Sumdum parcel is located in Sanford Cove, which has a rich coastal history. In fact, there are many artifacts in the area from both Native and mining activity. Furthermore, the area has a couple of anadromous fish streams, a unique array of birds, as well as other Alaskan animals. Currently, throughout Tracy Arm-Fords Terror Wilderness there is no development, which is unique. The Sumdum parcel is incredibly unique per the aforementioned reasons as well as the fact that it's a popular location for people to experience an undeveloped landscape, which is a diminishing landscape in Southeast Alaska. He reviewed those who use this parcel for various purposes, including commercial kayaking operations and programs targeting at-risk youth. Furthermore, when traveling in this area, there are a limited number of places to camp. Sanford Cove is an important anchorage in the area because once one enters the arm there is almost no area in which to anchor. Therefore, this

area is vitally important to commercial and independent people to anchor their boats out of the weather of Stephens Passage. This cove and parcel serve as a portal to the entire landscape. If the parcel is allowed to remain in the land selection and opened to development, a lodge will likely be constructed as is the case in any number of bays. Mr. Lydon urged the committee to remove the Sundum parcel from HB 295, as it impacts a very broad area. He then told the committee that he would send the committee a statement from 17 commercial tour operators who are concerned about the Sundum parcel.

[9:02:09 AM](#)

NORM CARSON, President, Pelican Chamber of Commerce, related his background and that he managed his dream of returning to Lisianski Inlet to retire and build a home. After 40 years in the area, he opined that he knows the inlet very well. However, when public hearings aren't held in communities like Pelican, expertise such as what he has to offer is lost. Such situations result in decisions like that of the university selecting the Mite Cove parcel. Mr. Carson said that he was present to support the removal of the Mite Cove parcel from HB 295 in exchange for another parcel that's within two miles of Pelican.

[9:03:19 AM](#)

CO-CHAIR HERRON inquired as to why Mite Cove was chosen.

MR. CARSON responded that he didn't understand the selection of Mite Cove because it is 13 miles from Pelican and sits on the corner of Cross Sound. Furthermore, it sits on the wrong side of the inlet for sun and doesn't have any good fresh water provisions. Mr. Carson surmised that the parcel must have looked good on the map.

CO-CHAIR HERRON questioned then why the property is attractive to Mr. Carson and his neighbors in Pelican.

MR. CARSON explained that it's attractive because the parcel is designated as a recreational undeveloped unit, which is appropriate for that parcel. Furthermore, it would be more attractive for Pelican to have development within two miles of its city limits [as would be the case with the parcel Pelican would like to exchange for Mite Cove].

[9:04:56 AM](#)

CO-CHAIR MUNOZ reminded the committee of Mr. Mylius' testimony that the House Education Standing Committee attempted to craft an amendment to accomplish the swap of the Mite Cove parcel for a parcel nearer Pelican. However, as that wasn't done appropriately, this committee will address it in a new committee substitute (CS).

[9:05:38 AM](#)

ERIC LEE, Fisherman, expressed concern with the Read Island and Whitney Island parcels as they are too important to the community [of Petersburg] for public use. Both of the islands are important in terms of subsistence use in the area since both are close enough to be accessed by skiff and are accessed almost year round. Furthermore, the charter fishing industry also relies heavily on the areas surrounding Read Island and Whitney Island as they provide an ideal surrounding for day charters. There is excellent fishing, whale watching, and general sightseeing opportunities. If these islands are privatized, the aforementioned will radically change. Conveying these parcels to the university will diminish the tourism draw and Alaskan experience. Mr. Lee also noted that the commercial fishing fleet uses the area heavily due to the good anchorages offered in that part of Frederick Sound, which would be lost if the parcels are privatized. In conclusion, Mr. Lee urged elimination of these two parcels from the selections for the university.

[9:11:07 AM](#)

ART BLOOM, Vice Mayor, Member, Tenakee Springs City Council, City of Tenakee Springs, highlighted the lack of public input during the [university land selection] process. The parcel, ST 1003, in Tenakee is about 350 acres, which is more private land than exists in the corporate boundaries. The City of Tenakee Springs is small and has limited financial resources. The committee, he said, should have a resolution from the City of Tenakee Springs requesting the removal of the [ST 1003 parcel]. Mr. Bloom informed the committee that residents of Tenakee Springs are concerned about the potential impact of the fabric of life in Tenakee if this parcel is given to the university. The residents of Tenakee Springs want to be able to maintain the opportunity for their current lifestyles. "No one asked the community about the concept of privatizing over 300 acres within our city boundaries. And when we found out about it, we have consistently voiced strong opposition to the concept," he related. He acknowledged that some changes are inevitable, as

is evidenced by the transformation of Tenakee over the years. As Juneau and state government has grown, Tenakee has been transformed into a city dominated by second homes. Now, this legislation proposes to take almost 40 acres by the boat harbor and lock up the land by the boat harbor. He questioned the impact of the potential addition of 20-40 more homes on the limited resource of the small natural hot spring with its flow of 8 gallons per minute. This natural hot spring is essential to the fabric of the community, he opined. Mr. Bloom stated that [the City of Tenakee] has consistently opposed this legislation because of the potential impacts to the community. He then suggested that the state shouldn't privatize these parcels, but rather should convey the land to the city for public use. He informed the committee that prior to the introduction of the [university land grant] legislation, the city was working with DNR to obtain a lease or conveyance of these harbor uplands. The city government of Tenakee owns almost no land within the town core and there is precious little flat land, save that at the harbor area. This land upland from the harbor is needed for public uses, not for privatization for second homes that would burden the local government, existing public facilities, and existing natural resources in Tenakee Inlet. The same can be said for the parcel along the Indian River Road, he said.

[9:15:52 AM](#)

REPRESENTATIVE CISSNA inquired as to the form of city government of Tenakee Springs. She also inquired as to the powers the City of Tenakee Springs holds.

MR. BLOOM related that the City of Tenakee has a city council of seven members, which elects the mayor. The city has received municipal grants. Within the corporate boundaries, the city owns about 3,700 acres. The town core of Tenakee Springs is a very small area and there are no roads in Tenakee and the city can only be accessed by plane or ferry. Presently, the city doesn't own any other property within the town core, other than a small lot on a steep hillside. Therefore, the city doesn't have an area on which to build a new community hall or fire hall. The primary area for such construction would be at the harbor uplands. In further response to Representative Cissna, Mr. Bloom clarified that Tenakee Springs incorporated into a second class city in the early 1970s. He noted that there is a clear paper trail of the negotiations the city has had with DNR regarding the city's interest in the harbor uplands area.

CO-CHAIR MUNOZ interjected that the committee packet includes that information.

9:19:14 AM

CO-CHAIR HERRON asked if the City of Tenakee would've discussed accommodating the university's interest in the harbor upland parcel.

MR. BLOOM reiterated that the harbor uplands had been identified as important to city, and thus the city wouldn't have wanted to let it go to another entity. When the university land grant legislation was passed previously, no public testimony was taken and the City of Tenakee was told that the [harbor uplands] wouldn't be included in the legislation. Therefore, the City of Tenakee was surprised when those parcels were included. Once the parcels were included, the city had conversations with the university regarding a potential land swap for the harbor uplands. In fact, the city was at the point of having an appraiser come appraise the lands. However, the lawsuit was instigated and the aforementioned process stopped. In further response, Mr. Bloom said that the City of Tenakee would continue the discussions if it was forced to do so. Still, the city would prefer not to trade its lands for the reasons mentioned earlier.

9:22:12 AM

MARY IRVINE began her testimony by informing the committee that she is a strong supporter of the University of Alaska. She noted that she has taken various classes at the university and has served as a volunteer instructor. Ms. Irvine related her desire for the University of Alaska to have more financial stability and support. However, she requested that the committee exempt the Sumdum parcel, a 5-acre parcel, from HB 295. Alternatively, she requested that DNR select another 5-acre choice parcel to include in HB 295. Ms. Irvine then directed the committee's attention to page 44 of the committee packet, which is a chart provided DNR. She pointed out that although the chart lists Sumdum as dispersed recreation, the Central Southeast area plan designates Sumdum as recreation undeveloped, which is the most restrictive category. Recreation undeveloped lands can't be sold to an individual. Furthermore, the Central Southeast plan, which outlines the state's management intent for this parcel, was the result of an intense public process with adequate notice and intense public comment. The aforementioned plan was formally adopted by the state in

November 2000. The plan, she opined, should be the controlling document regarding whether Sumdum is in the university's land selection, not the aforementioned chart.

MS. IRVINE then informed the committee that the Sumdum parcel is located about 40 miles south of Juneau and is abutted on either side by the mouth of two very productive salmon streams as well as a historic cultural site important to many Tlingit people and Alaskan history scholars. The Sumdum parcel is on the site of the old fish camp, just across the inlet to Endicott Arm. She reviewed the historical significance of the Sumdum parcel in terms of its Tlingit and American history, including its clan houses and the old townsite that existed at the location. In fact, the site boasts American Alaska's first brewery. She told the committee that the Alaska State Historical Library has several photographic collections from the town of Sumdum. Furthermore, there are several historical accounts of botanists collecting undiscovered plants. There are also accounts of early governors stepping in to mediate civil disputes at Sumdum.

MS. IRVINE opined that the history of Sumdum is significant and what tourists seek. She further opined that DNR is the appropriate holder of this land as it manages land for the good of all Alaskans. The requirement for the state to hold land in common for the good of all Alaskans is specified in the Alaska State Constitution. This parcel is a priceless treasure, she opined. Ms. Irvine said, "Land doesn't always make money for us in the way that we think it's going to or in the way that we try to make it make money for us," she pointed out. She then related that although the anthropology and history professors she spoke with were universally dismayed that a historical site would be taken out of the public domain, not one of the professors was interested in performing research or had the graduate student labor to administer research on the property. Therefore, she questioned the reasoning behind transferring the land to the university, if its staff isn't interested in it even as a research site. She further questioned whether the Sumdum parcel is such a burden to the land managers at DNR. Ms. Irvine recalled that five years ago when the original university land selection legislation was moving through the legislature, it was difficult to bring to light the special historic nature of the site. Therefore, it remained unreal and not an issue for the legislature and the land's office. Ms. Irvine emphasized that removing the Sumdum parcel from the legislation wouldn't be burdensome to the state or the university, although it would be significant to historians.

[9:34:31 AM](#)

CO-CHAIR HERRON announced that the committee will delete the Sumdum parcel in a forthcoming committee substitute (CS), an action which DNR supports. He then asked the committee if there was any objection to allowing the co-chairs to work on a CS.

[9:35:03 AM](#)

REPRESENTATIVE GARDNER questioned whether there is something more the committee could do, such as placing a covenant on this property to avoid a similar battle in the future. She proposed implementing a more permanent protection for the Sumdum parcel.

CO-CHAIR MUNOZ confirmed that the co-chairs are working on language to accomplish the aforementioned.

CO-CHAIR HERRON interjected that the co-chairs will work with DNR on areas [of the legislation needing improvement].

[9:35:52 AM](#)

CO-CHAIR HERRON remarked that perhaps Ms. Irvine's efforts could go toward convincing the administration that perhaps there should be a resource extraction site that could provide revenue for the university.

[9:36:38 AM](#)

REPRESENTATIVE GARDNER informed the committee that when the original university land grant legislation proceeded through the legislature, former Representative Croft proposed removing all the identified lands from the legislation and replacing them with Point Thomson.

[9:37:16 AM](#)

AL RUEBEN, Member, Tenakee Springs City Council, related his support for Tenakee Springs resolution 2010-16. He said he would focus his comments on the C30 parcel, which includes the C31 and C32 parcels. The aforementioned parcel is commonly referred to as the harbor uplands in Tenakee. This parcel is located directly above the Tenakee Springs harbor and can be described as a mess. In fact, squatters have erected crude shelters on the property as well as prefabricated structures. This is state property on which the city has no jurisdiction. Furthermore, a commercial saw mill has setup shop on the

property and is selling lumber commercially. This property also holds a fair amount of junk and garbage. At one count, the harbor uplands had 45 boats stored on it, some were residents' boats, some were nonresidents' boats, and others were derelict. Therefore, to convey this parcel to the university would hand them a huge problem with legal fees and cleanup expenses. Moreover, conveying the upland harbor parcel to the university would leave the Tenakee harbor virtually water locked. He informed the committee that the state is in the process of conveying the harbor to the city and city ownership of C30 is imperative to complete the transaction. Currently, one-third of the harbor has been conveyed to the city. Mr. Rueben related that the City of Tenakee has a plan and has been trying to work with DNR to cleanup this parcel. However, the city has been continually told that the department doesn't have the resources to do so. He informed the committee that the City of Tenakee has sought an 810 conveyance previously and has applied twice for a lease.

MR. RUEBEN related support for the university, but requested that these lands aren't conveyed to the university. He expressed the need for the city to obtain [all of the uplands harbor property]. The city believes that the best way to proceed at this time is for the city to request eliminating the uplands harbor property from the conveyance while the city continues to work with DNR on obtaining an 810 conveyance. He stated that DNR has a plan for the public use of this property. A land swap, or any conveyance of land from the city, would require a vote from the city residents. In fact, prior to the lawsuit, the city was in the process of a land swap, he noted.

[9:42:42 AM](#)

REPRESENTATIVE CISSNA asked if the co-chairs plan to address the concerns of Tenakee Springs' residents in a CS.

CO-CHAIR HERRON confirmed that the co-chairs intend to work on this parcel within the CS, adding that it would be nice to be able to accomplish the conveyance in this legislation.

MR. RUEBEN commented that the City of Tenakee would really appreciate that.

[9:43:51 AM](#)

DONALD BULLOCK, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA),

reminded the committee that the reason the lands list is the same as in prior university land grant legislation is because of the Southeast Alaska Conservation Council v. State case. That case was based on the issue that the funds generated from the land would be dedicated funds under the prior legislation, which the courts ruled was in violation of Article IX Section 7 of the Alaska State Constitution that prohibits dedicated funds. He acknowledged that the constitution does allow for dedicated funds into the permanent fund, which is also a sub issue in this land transfer. In order to reach the decision that these funds are subject to the dedicated funds provision, the court first had to conclude that the funds were state money subject to the provision. The court did so by recognizing an earlier case that found university land to be state land. Under the Statehood Act, the state may not convey mineral interests away from the state. Therefore, so long as the university is the state, it can hold mineral interests. Another section of the constitution said that the university could hold title to land, which is different than the proceeds [from that land]. Therefore, any land that is conveyed to the university is state land, regardless of title. The legislation before the committee proposes to address the dedicated fund issue by making proceeds generated from the land to be university receipts, subject to appropriation. However, the legislation fails to address the court ruling that the administration and disposal of the conveyed land has to be done by law. He read the following excerpt from the case:

Our opinion emphasized article VII, section 2's command that "property shall be administered and disposed of according to law," and noted that "'according to law' refer[s] to the legislature's power to make laws." Thus, even when the University has title to land, "only the legislature can make laws effecting the disposal of land, not the Board of Regents."

MR. BULLOCK pointed out that much of the public testimony has to do with how the land to be transferred will be administered and disposed. The aforementioned begs the question regarding what law will be applicable. The court further said, "Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion." To focus on one part of the management issue, one could consider the transfer of the Nenana oil and gas tract to the university. If gas is there and subject to lease, the question becomes what

law would apply. He directed attention to AS 38.05.180, which describes the procedure for oil and gas leasing of state land. In AS 38.05.030, there's an exception that specifies: "Land owned by the Board of Regents of the University of Alaska is not subject to this chapter." Chapter 38.05 is the Alaska Land Act that includes the oil and gas leasing provision. The question is then what law is applicable. The concern, he said, is that state land is state land, and therefore one would expect that if the university owns the land, it would manage it as other state land is managed. One option is that the university would manage land under the provisions of the Alaska Land Act, and the university would do so in place of DNR. However, that's a duplication of effort. Therefore, the legislation provides title to the university and doesn't dedicate any funds from the land, and the management is subject to the laws of the legislature.

[9:49:25 AM](#)

MR. BULLOCK, in response to Representative Cissna, clarified that there are two different issues. One issue is in regard to the land itself and the expectation that at some point it will generate revenue, which has to do with the administration disposal of the land. The administration disposal of the land is required by law. Once revenue is generated from that land, the question is how the revenue is returned to the university. The revenue can't return to the university unless there is an appropriation. An alternative method would be to designate the same land and specify that DNR would continue to manage it under state law, which would avoid the possible conflict between university policy and state law with regard to management. The funds could be deposited into a special fund within the general fund, from which the legislature can appropriate money to the university. The aforementioned has been done before. The legislation before the committee fairly well accomplishes the aforementioned, he said.

[9:51:42 AM](#)

CO-CHAIR HERRON highlighted that this committee is charged with being responsive to the citizens of the regions in the state. He then remarked that the focus of the committee's work will be on cleanup and will continue to work with DNR.

CO-CHAIR MUNOZ noted her agreement, specifying that the forthcoming CS will address the Mite Cove parcel, the Sumdum parcel, and the Tenakee harbor uplands parcel.

[9:52:50 AM](#)

MR. BULLOCK pointed out that the university land selections are designated by general descriptions, and therefore it would be helpful to include the legal descriptions for the land particularly for those cases in which the land has only been designated as a parcel. Such legal descriptions would make these lands consistent with other land provisions in statute rather than referring to a document that is five years old.

[9:54:01 AM](#)

MR. MYLIUS related that although as a general rule the governor prefers not to delete parcels, DNR is willing to work with the committee to do so properly. He acknowledged that it's the legislature's prerogative to modify the legislation and delete parcels. With regard to the issues raised by Mr. Bullock, Mr. Mylius related that the Department of Law fundamentally disagrees with Mr. Bullock's comments regarding what laws apply. With regard to the lack of legal description in the legislation, the 2005 legislation didn't include the legal description because it would have taken months to generate those. The descriptions in the selection book follow section lines or the boundaries of specific parcels of DNR lands. Therefore, it's fairly easy to match the shape of the parcel. He opined that it has always been clear to the public. He noted that there are legal descriptions in the deeds, but if those were placed in the legislation it would be quite lengthy. Therefore, DNR doesn't feel it's necessary to include the legal descriptions in the legislation.

[9:57:00 AM](#)

CO-CHAIR MUNOZ requested a written response to Mr. Bullock's testimony from DOL, to which DOL staff agreed to provide.

[HB 295 was held over.]

[9:57:32 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Community and Regional Affairs Standing Committee meeting was adjourned at 9:57 a.m.