

**ALASKA STATE LEGISLATURE
ADMINISTRATIVE REGULATION REVIEW COMMITTEE**

March 15, 2010

3:04 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Senator Donald Olson, Vice Chair
Representative Carl Gatto
Senator Albert Kookesh
Senator Kevin Meyer

MEMBERS ABSENT

Representative David Guttenberg

OTHER LEGISLATORS PRESENT

Representative Tammie Wilson

COMMITTEE CALENDAR

REGULATIONS RELATING TO PERSONAL USE CABIN PERMITS

- HEARD

PROPOSED REGULATIONS RELATING TO CHEESE PRODUCTION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

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

POSITION STATEMENT: Reviewed the personal use cabin permit (PUCP) program as well as questions concerning leases.

SENATOR TOM WAGONER
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of PUCP program, asked questions.

RAY WILLIAMS
Anchor Point, Alaska

POSITION STATEMENT: Expressed concern that it's not a level playing field with regard to the cabin owners on Caribou Hills.

ERNIE SOUJA
Homer, Alaska

POSITION STATEMENT: Expressed the need for the phase-out to end and a process to be utilized to transfer the cabins to public use.

KENT KOHLHASE
Anchorage, Alaska

POSITION STATEMENT: Related suggestions regarding the personal use cabin permits.

FRED BRAUN
Kenai, Alaska

POSITION STATEMENT: Testified that he would like to be included in the group for which exceptions to the PUCP program have been made.

HARRY OLSON
Anchor Point, Alaska

POSITION STATEMENT: Testified that that the PUCP program already has a built-in mechanism by which it terminates.

CLANCY MCLAREN
Anchor Point, Alaska

POSITION STATEMENT: Expressed concerns with the PUCP program.

GARY WILLIAMS
Homer, Alaska

POSITION STATEMENT: Testified that there should be an amendment process for those who have worked within the guidelines [of the PUCP program].

MYRA NEFF
Fairbanks, Alaska

POSITION STATEMENT: Testified that [existing permit holders] should be provided the opportunity to purchase the property.

JOHN WOOD
(No address provided)

POSITION STATEMENT: During discussion of PUCP program, related his situation.

MEL GILLIS

Anchorage, Alaska

POSITION STATEMENT: During discussion of cabins on leased state land, related his situation.

TRACY VERN

Eagle River, Alaska

POSITION STATEMENT: During discussion of cabins on leased state land, suggested the need to recognize commercial guiding operations for fishing and hunting.

LINDA VERN

Eagle River, Alaska

POSITION STATEMENT: During discussion of cabins on leased state land, expressed the need to allow her family to purchase their parcel of land.

LAWRENCE ALBERT, Attorney at Law

Anchorage, Alaska

POSITION STATEMENT: During discussion of cabins on leased state land, expressed concerns.

KRISTIN RYAN, Director

Division of Environmental Health

Department of Environmental Conservation

Anchorage, Alaska

POSITION STATEMENT: During discussion of cheese regulations, offered comments.

ACTION NARRATIVE

[3:04:43 PM](#)

CHAIR WES KELLER called the Administrative Regulation Review Committee meeting to order at 3:04 p.m. Representatives Keller and Gatto and Senator Meyer were present at the call to order. Senator Kookesh arrived as the meeting was in progress. Also in attendance was Representative T. Wilson.

The committee took a brief at-ease.

Regulations Relating to Personal Use Cabin Permits

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CHAIR KELLER announced that the first order of business would be a continuation of the review of personal use cabin permits and then the committee would hear from those with cabins on leased state land.

3:07:28 PM

DICK MYLIUS, Director, Division of Mining, Land and Water, Department of Natural Resources, explained that the personal use cabin permit (PUCP) regulations stem from a law that passed in 1984 regarding what to do with cabins constructed on state property without permits. In 1984 the Department of Natural Resources (DNR) and Alaska Department of Fish & Game (ADF&G) discussed with the legislature how best to authorize some of the cabins that were essentially in state trespass. He noted that many of the cabins were located on state game refuges. The legislature passed a law, albeit it has since been repealed, that would allow DNR to provide a one-time only authorization to these cabins. The idea being that these weren't disposable properties; this was land the state wanted to keep in state ownership for various public uses. Therefore, the state didn't want to create an ownership interest in the land and thus it was given out in permits. The statute, AS 38.04.035, read as follows: "(4) For enabling isolated cabin development in remote locations where survey and conveyance is impractical, or where disposal of land would cause potential conflicts with other resources and uses, or where long-range interest in public ownership and use exist, a system for cabin permits on public land may be used." Based on that law, regulations went into effect. The regulations set forth a procedure by which cabins built on state land prior to August 4, 1984, could be authorized. He noted that it was clear that the authorization didn't convey any preference rights for lease or purchase of state land. The regulations laid out the application process, the fee, and included a renewal provision, which is of concern today. The renewal provision is established in 11 AAC 65.040, which read:

- (a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit. The application must be accompanied by the fee prescribed by 11 AAC 05.010.
- (b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

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CHAIR KELLER opined that there's a distinction between the use of the land and having an interest in the land. One of the regulations seems to phase out the use of unauthorized cabins. He asked if there's statutory authority for that.

MR. MYLIUS answered that the statute doesn't specifically address phasing out [the use of unauthorized cabins]. He related his understanding from discussions with the legislature that the program would eventually phase out the cabins. Statute made it clear that these lands were to be kept in public ownership and permits would be allowed versus disposal, which is what a lease or sale is considered. The regulations were based on discussions with the legislature. He pointed out that the conditions of the permit, 11 AAC 65.080-090 as well as 11 AAC 65.010, are the regulations that address the phasing out [of unauthorized cabins on state land].

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CHAIR KELLER opined that in 11 AAC 65.010 there seems to be a conflict between phasing out the use of unauthorized cabins on state land and converting them to public use where appropriate.

MR. MYLIUS clarified that the goal was to either phase out the use of unauthorized cabins or, where appropriate, convert them to public use. The only public use cabins are those that ADF&G has been able to use for fish and wildlife management purposes or convert into public use cabins.

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MR. MYLIUS, returning to his overview, directed attention to 11 AAC 65.090, which specifies the conditions of the permit. He highlighted that 11 AAC 65.090(1) specifies that each permit is good for up to six years. He then directed attention to 11 AAC 65.090(6)(B), which specifies that the permit is revocable upon violation of various aspects. Regulation 11 AAC 65.090(6)(E) specifies that no additions to or enlargements of the cabin are allowed. The aforementioned has been an issue for some of the renewals. Regulation 11 AAC 65.090(6)(E) specifies that a cabin that's destroyed or damaged beyond repair must have written approval of the director prior to rebuilding the structure. Moreover, 11 AAC 65.090(6)(I) says that the cabin may not be used for a commercial activity or a personal residence.

MR. MYLIUS then informed the committee that initially 355 permits were granted in 1985 and 1986, of which 241 permits are active, 22 permits were closed, 84 permits became suspended or inactive, 1 was transferred, and 7 permits are currently under appeal as part of the renewal process. Most of the cabins came up for renewal this year. He explained that when the program was established, most of the original cabins were [processed] in batches, save the Northern region. The renewal for cabins in Cook Inlet, in game refuges and such, came up for renewal June 30th/July 1st of the past year. When those renewals came up there were 12 applicants who filed late and appealed the decision to reject their applications. The regulations, he pointed out, specify that the renewals have to be submitted between 90-180 days before the expiration of the permit. The department sends out a reminder regarding the pending expiration and need to complete renewal applications. However, a number of people ignored those reminders and didn't get their applications in on time. The result was that 12 people appealed. The commissioner decided to grant those appeals because in the past the department has ignored the regulation regarding expiration of the permit. The decision specified that from that point forward no late applications would be taken. The committee packet includes a letter dated August 7, 2009, which clarifies that the policy has changed and that late applications wouldn't be taken. The aforementioned letter was sent via certified mail to all individuals whose cabins were expiring. The result was that late applications were rejected and some individuals were told not to file because they were late. Currently, several applications are on appeal. The committee packet includes a document [entitled "Southcentral 2009 Denied Personal Use Cabins"] that lists the denied public use cabins and lists their status. He related his understanding that only one of the late applicants appealed. Seven appealed after being rejected because the cabin was over-built. He pointed out that the committee packet includes photographs of two cabins that were rejected because they were over-built.

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MR. MYLIUS, in response to Chair Keller, reviewed the document entitled "Southcentral 2009 Denied Personal Use Cabins." He added that there are a few denied applications that are under review due to a question regarding the postmark date. The decision on the aforementioned applications is that they will have to be reviewed for the other conditions of the permit. One of the conditions of the permit is that the permit is only good

for the longest surviving applicant of the cabin permit. A number of these cabins may have initially had an 18-year-old designated as the applicant as that was the youngest age allowed.

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REPRESENTATIVE GATTO pointed out that the aforementioned spreadsheet lists the name of Rollin Braden twice, with the same address but different driver's license numbers.

MR. MYLIUS clarified that in this case the initialism "ADL" refers to an Alaska Division of Lands number, and thus refers to a different case file.

REPRESENTATIVE GATTO asked then if Mr. Braden has two separate cabins.

MR. MYLIUS replied yes. He added that he didn't recall there being a restriction on the number of cabins one had.

[3:27:19 PM](#)

SENATOR OLSON inquired as to whether there are provisions for an individual with a cabin that belongs to the state for that individual to obtain possession of the land and keep it in the family.

MR. MYLIUS replied that there is no such provision in state law, except for preference right land sales that are performed under very limited conditions. For example, individuals with pre-statehood use and occupancy of a parcel of land could apply to purchase the land. However, most individuals who would've qualified for such have long-since made those applications. He noted that it has to be continued use and occupancy, which would mean that the individual would've had to qualify for 51 years at this point. He further noted that individuals can apply under the preference right statute if an individual sought to obtain authorization when the land was federally owned or if, even when it was state land, ownership wasn't received because of an error or omission in processing the land. The latter would apply to those trying to perfect a homestead claim or a TNM claim under federal law, but because of a combination of either state land selections or Alaska Native Claims Settlement Act (ANCSA) land claims they were never able to perfect it. Beyond those exceptions, there's no state law allowing individuals to obtain ownership of a cabin site that was [illegally] built on state

land. He noted that there are plenty of programs for state land sales. There have been instances in which individuals with unauthorized cabins on state land have moved their cabin to parcels that were in a nearby land sale, he recalled.

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SENATOR OLSON inquired as to how the adverse possession is addressed in a situation in which an individual has developed [state] land.

MR. MYLIUS stated that adverse possession can't be claimed against the state. He deferred to Department of Law representatives for further information on adverse possession.

[3:30:32 PM](#)

CHAIR KELLER asked if the regulations were based on a repealed statute.

MR. MYLIUS replied yes, adding that the statute was established in 1984 and subsequent to that regulations were adopted. Long after that time, the statute was repealed. Although the regulations are still valid and in effect, no cabin permits can be issued because the statute doesn't exist, he explained. Therefore, no new people can qualify under the statute.

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CHAIR KELLER asked if any statute exists that authorizes phasing out the use of these cabins.

MR. MYLIUS answered that there's no specific statute that authorizes phasing out the use of these personal use cabins. Moreover, the statute under which the department was working under was the 1984 statute and the regulations were adopted under that. The regulations specifically address phasing out as well as a process to continue the process so long as the procedures are followed. Mr. Mylius reiterated that there is no statute to reauthorize cabins, such as if the permit expires under existing statute. In the case of a permit that expires, the cabin becomes an unauthorized use of state land for which the department, under general land management statutes, requires removal. However, the aforementioned is rarely performed. In the last 10 years, only 12 times has the department required removal of things, which are sometimes not cabins but rather are tent frames and such. Under the mining law, certain cabins have

been required to be removed. These are situations in which a mining claim was used to obtain a recreational cabin or to live on the mining claim, which isn't allowed under the state's mining law.

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SENATOR OLSON surmised then that when cabins are removed they are burned.

MR. MYLIUS related his belief that DNR hasn't burned any cabins, except for those that were identified as debris. Of the 12 cabins that were removed over the last 10 years, several were tent frames that a contractor was asked to take down. Two to three of the cabins were moved to nearby private land.

SENATOR OLSON stressed that what [DNR] might consider rubbish would be helpful to someone in survival mode, particularly anything that would burn. Therefore, he took exception to the removal of things that could be utilized in a survival situation.

[3:34:55 PM](#)

SENATOR TOM WAGONER, Alaska State Legislature, questioned why the commissioner would, in mid-year, authorize 12 permits on appeal, but wouldn't do so for [all] the permits under appeal that year. He opined that it doesn't seem to be a level playing field. Senator Wagoner said that he understood that the department doesn't want as large structures as some built in the Caribou Hills area. However, he suggested that the department should require the cabin owners to submit a plan of the rebuild prior to authorizing them to do so. The aforementioned would avoid the situation in Caribou Hills.

MR. MYLIUS clarified that the commissioner hasn't acted on the additional appeals [beyond the 12 authorized]. However, the commissioner's decision on the 12 [authorized] permits made it clear that it would be the last time DNR would accept late applications. When the renewal notices were sent to the cabin owners due at the end of December, the letter specified that applications must be submitted in time because the commissioner isn't going to waive the regulation this time. He noted that the committee packet includes a copy of the aforementioned letter. With regard to pre-approval for a rebuild, Mr. Mylius informed the committee that the [cabin owners] had to obtain approval from DNR to rebuild. He explained that a number of

these cabins are in Caribou Hills, which burned a couple of years ago. For those whose cabins burned, DNR established a specific process to reapply if they wanted to rebuild. Although it would've been a good idea, approval of the specific site plans was not part of the process.

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REPRESENTATIVE GATTO recalled the Open to Entry program in the 1970s. At the time, people could claim 10 acres of land up the Salcha River in Fairbanks. Although the land wasn't available until 12 miles had past, claims were stacked starting at mile 6. Those were illegal claims. He questioned what happened to those illegal claims. He then asked whether such illegal claims became the property being discussed today.

MR. MYLIUS said that he wasn't familiar with that situation, but offered to find out more. The Open to Entry program was a program through which the department identified specific areas that were open to stacking. This land sale program was subsequently repealed and replaced by the Remote Parcel program in the late 1980s, which was replaced by the Remote Recreational Cabin program. Today, the application for those who stake outside of areas offered for the Remote Recreational Cabin program would be rejected.

[3:42:04 PM](#)

REPRESENTATIVE GATTO inquired as to whether [DNR] is rewarding and favoring those who made illegal claims to land. He questioned whether those with illegal claims to the land received title to it.

MR. MYLIUS answered that he doubted that those with illegal claims ever received title to the land because there is no program by which trespass can be authorized and changed into title to the land. However, it's possible that some of these situations could've fallen under this program, which is specifically designed not to give title to those with cabins built in trespass.

[3:43:40 PM](#)

REPRESENTATIVE GATTO opined that if the state allows individuals who illegally claimed land and built structures to continue to occupy them, it seems to reward them while penalizing those who obey the law.

MR. MYLIUS confirmed that's essentially what the program in 1984 did.

[3:44:40 PM](#)

CHAIR KELLER turned to public testimony.

MR. MYLIUS said he would be happy to talk more about the Bureau of Land Management (BLM) lands later, in which the state is trying to obtain clean title, both physically and legally, to the land from the federal government. In terms of Senator Olson's concerns regarding taking away cabins, the committee should have a map that illustrates that not all the cabins are being eliminated. He explained that DNR is certainly open to situations in which someone is willing to come forward and be legally responsible and open to the public. He also noted that some of the sites aren't cabins, but rather are tent frames, garbage heaps, or containers of hazardous waste. Mr. Mylius also offered to address the unique situation in which the land on the Alaska Peninsula was transferred to the Aleutians East Borough.

[3:47:23 PM](#)

RAY WILLIAMS informed the committee that he has had a cabin in Caribou Hills since [its existence], a cabin that he registered. He related his belief that it's not right that those who didn't register their cabins seem to be okay. Furthermore, he related that he wasn't able to renew his permit due to medical reasons and the department representative assured him that nothing could be done. Therefore, he didn't go through the process of turning in an application for renewal. He reiterated that he has tried to do what's right with his cabin, but now he's being penalized while others decided not to register their cabins.

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ERNIE SOUJA related that he, too, has had a cabin [in Caribou Hills] for many years and it's in compliance. He expressed his desire for the phase-out to end. There is a safety issue due to the number of folks recreating and hunting in the area. He said he knows of several individuals who have spent the night in his cabin due to weather conditions and [transportation] breakdowns. These personal use cabins are a necessary safety net. He expressed the need for a process to transfer these cabins and keep them in public use for use in emergencies.

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KENT KOHLHASE informed the committee that he has a "duck cabin" that his father and his partner constructed in 1965 to replace the original cabin that was destroyed in the 1964 earthquake. He related that he missed the 2009 filing deadline and his late application was denied. The denial letter stated that "no other alternative but to deny a request for renewal exists." The crux of the issue, he surmised, is that DNR has adopted a stricter interpretation of the regulations. This interpretation is in direct contrast to what was utilized in the 1991, 1997, and 2003 application periods. For example, he missed the 1991 application period because the permit application was mailed to his father's partner, who had just passed away. Since an application wasn't filed, the permit was terminated. However, when he wrote an appeal, the acting director granted an appeal in which the [acting] director said in his opinion there was no conflict with the public interest and the phase will occur over time as the permit holders die over time. The appeal from the [acting] director also related his opinion that 11 AAC 65.040 allowed him the administrative discretion to modify or adjust the penalty for missing the filing deadline. The [acting] director further said that he saw little difference between a late application and a timely application other than the administrative burden. Mr. Kohlhasse related that an acquaintance missed the 2009 filing deadline. After losing his application, the acquaintance went to DNR to obtain a blank application. However, a DNR employee told the acquaintance that he couldn't have the application. The acquaintance had to request through two levels of supervision just to obtain the form. Mr. Kohlhasse clarified that although he works for a federal land management agency, he's not involved in administering permits. He informed the committee that [the federal land management agency with which he works] doesn't terminate permits based on a single missed deadline.

MR. KOHLHASE, in closing, opined that he would like to have an option allowing the cabin and some surrounding land to be transferred to his family. Absent that, he suggested a longer permit timeframe that would allow him and his family to use the cabin without worrying about a deadline every six years. He also suggested the desire to add family members to the permit. Mr. Kohlhasse further suggested that permits be valid until [the permit holder] dies, even if the term isn't extended. At a minimum, Mr. Kohlhasse expressed the need for DNR to adopt a more pragmatic approach in dealing with individuals who miss

deadlines and perhaps make additional efforts to contact those who miss deadlines.

[3:56:15 PM](#)

FRED BRAUN informed the committee that he and two others built a cabin on the west side of Cook Inlet in 1971. In 1984, the two remaining partners complied with the permitting process. Since 1971 close to 200 people, including ADF&G staff who performed research, have used the cabin. Furthermore, on three different occasions pilots and fishermen have used the cabin in extenuating situations due to weather or equipment problems. Mr. Braun said that the cabin has always been well kept and they have had no issues with DNR until this year. He related that this year the envelope from the state was a plain manila envelope with no deadline stamp on the outside and thus he assumed the deadline remained December 31st. Therefore, when he sent in the check, it was received too late. Mr. Braun acknowledged that was partially his fault, but opined that a deadline stamp on the outside would've been helpful. He noted that over the course of the years, the cabin was upgraded and maintained. Although he emphasized that prior to 2009 he was never late, there was a provision to pay a small administrative fee after which the permit would automatically be renewed. He noted that he has appealed his denied application. Mr. Braun opined that there have been some provisions and exceptions for a certain group and he would like to be included in that group and thus have his permit reinstated.

[4:01:35 PM](#)

HARRY OLSON related that due to health issues he was unable to file in a timely fashion. Once the health issues were resolved he spoke with Mr. Vail, DNR, who told him not to bother to appeal or apply because the department won't approve it. Consequently, he didn't and that seems to be a mistake. Mr. Olson opined that there is a way to terminate this entire program, which is to allow the program to end when the original permit holders have all deceased. Furthermore, the problem with permit holders who have expanded their cabins is an entirely different issue. He opined that he has complied with the terms of the original permit. He questioned why there is an issue now with this program [when the program is established to terminate when all the permit holders have deceased].

[4:03:27 PM](#)

CLANCY MCLAREN related that although he isn't a permit holder, he has certainly used a cabin during a storm. He expressed [concern] with regard to the conflicting information from the department. Since there is no state provision to perform maintenance on these cabins, he questioned why the state would want control over these cabins for which the renewal application was received late, particularly those applications that were late due to medical reasons. He further questioned whether the state, once it takes over these cabins, will tear them down or maintain them. He then questioned what would happen to the 100 cabins that have disappeared. He asked why those interested in these cabins weren't given the opportunity to take over the sites.

[4:05:26 PM](#)

CHAIR KELLER related his understanding from DNR that late applications are out of luck.

[4:06:04 PM](#)

GARY WILLIAMS related that there are several illegally built and expanded cabins in the Caribou Hills area that were clearly built after 1985. In fact, he said he knows of one individual who has illegally built three cabins. Mr. Williams opined that for those who have worked within the guidelines for existing cabins, there should be an amendment process. "Where's the benefit to the guy who did it [built a cabin] the right way and the legal way," he asked.

[4:07:34 PM](#)

MYRA NEFF noted that she sent written testimony to the members. She related that although her situation is similar to others, she suggested DNR rid itself of the administrative costs associated with the permitting process by providing those on the property the ability to purchase the property. She characterized the inability to hold or transfer these cabin sites to future generations within the family as oppressive and heavy-handed. Ms. Neff opined that the state is wealthy in land ownership and the state should respect those who have etched out small parcels.

[4:09:11 PM](#)

REPRESENTATIVE GATTO inquired as to how one would estimate the value of these parcels in order to allow them to be available for purchase.

MS. NEFF answered that she has no idea, although she suggested that it would be feasible to do so through a survey process. Ms. Neff opined that she's merely seeking the opportunity to have the land surveyed and pay a fair and equitable rate for the property.

[4:09:37 PM](#)

REPRESENTATIVE GATTO asked if Ms. Neff felt she would be at-risk because if the state offered it for purchase, the state may assign it to the highest bidder.

MS. NEFF stated that she understood the state may want to do so.

[4:10:07 PM](#)

JOHN WOOD an owner of a "duck shack," related that the death of his wife, his hospitalization, and death of his daughter all resulted in him not renewing his permit. Once he returned to his cabin, he received a letter from DNR stating that the cabin would be removed and the department wanted a removal plan by April 5th. He said he explained his situation, but the department denied his explanation.

[4:13:27 PM](#)

MEL GILLIS informed the committee that he has been guiding in Alaska for 40 years and has a guide area on the Alaska Peninsula since 1974. In 1984, he began the process for a headquarter site permit in the guide use area on the Alaska Peninsula. The area was given to him by the state guide board. At that time, the state recognized the need for a headquarter site for guiding operations, particularly on the Alaska Peninsula where the weather can be bad. In 1985 he requested a change from a permit to a 55-year lease and in 1989 he received a 25-year lease. The DNR staff administering the lease told him that when the lease sunset in 2014, he could reapply and if the lease went to competitive bid the highest bidder would have to pay for his improvements. Therefore, he built a nice lodge, perhaps spending about \$1.5 million. In 2005 the state transferred his lease to a borough, which left Mr. Gillis with a \$1.5 million investment on someone else's land. Currently, he related he is trying to negotiate with the borough. In case he has to

relocate his lodge, Mr. Gillis applied for a new lease because moving his lodge about 300 feet would place him back on state land. The front page of the lease asks whether the applicant wants to buy or lease the land. Although he said he wanted to purchase the land, he was told he couldn't do so. The lease application also asks how long the lease is desired, but notes that there's a 55-year maximum. However, he was told he couldn't apply for a 55-year lease. Mr. Gillis told the committee that since 1989 he has visited DNR once or twice a year to determine if there was any way he could purchase the land. Although he was continually told he couldn't purchase the land, he discovered that if the director agrees to such a purchase it can occur. At this point, his five-acre site has been transferred [to the borough]. Mr. Gillis pointed out, "The Alaska Constitution, state law, and the Alaska Legislature all direct the Department of Natural Resources to sell state land for settlement and private ownership. Article VIII of the Alaska Constitution states: 'It is a policy of the state to encourage the settlement of its land and development of resources by making them available for maximum use consistent with the public interest.'"

MR. GILLIS informed the committee that in the last 10 years DNR had him burn two cabins, one of which was located on the Sandy River air strip and the other at Ilnik. The one on the river was in fairly good shape and had been used when folks had to land in bad weather. He related that through a legislator he asked DNR how many leases have been transferred to boroughs, but the department has yet to provide a meaningful answer. In regard to Mr. Mylius' comments that there is state land for sale, Mr. Gillis pointed out that it's usually for businesses [for recreation]. In fact, DNR's paperwork doesn't seem to discuss commercial leases for businesses. In conclusion, Mr. Gillis opined that DNR seems to be throwing Alaskans off of Alaska.

[4:22:19 PM](#)

MR. GILLIS, in response to Senator Olson, confirmed that he was told by DNR to burn some [trespass] cabins. In further response, Mr. Gillis related that he took photographs of before, during, and after the fires, which he turned in to DNR. He offered to provide the committee with the names of the DNR staff involved. He stated that he doesn't have any written documentation regarding DNR's request for him to burn the cabins.

[4:24:05 PM](#)

TRACY VERN informed the committee that he entered the guiding business in the early 1980s after he purchased an existing guide operation that included a cabin built in 1965 on the Alaska Peninsula. He related that he attempted to acquire title to the land, but was denied. In 1985 he applied for a 55-year lease, but only obtained a 25-year lease. The lease will expire in 2024. Since acquiring the lease, he has invested \$200,000 in building a guest cabin and a lodge. Subsequently, his lease was transferred from the state to the Lake & Peninsula Borough. Mr. Vern opined that this property has brought quite a bit of income into the state through license and tag fees. He estimated a total of about \$470,000. Furthermore, he estimated the gross value since 1965 to be over \$3 million. Although he would like to bring his son into the business, it seems like a dead end street. Mr. Vern opined that it's time the state recognizes some commercial guiding operations for fishing and hunting similar to commercial setnet sites.

[4:27:04 PM](#)

LINDA VERN related that she attended a Lake & Peninsula Borough meeting March 12, 2010, at which the mayor told her the borough has no intention of allowing the Vern family to purchase the property on which they have been for 27 years and for which there is no value without the services her husband provides. The reasoning behind the aforementioned is that the borough could make more money leasing them the land rather than selling it to them. Ms. Vern inquired as to the percentage of Alaska land that is privately owned. She estimated that only 1 percent of land in Alaska is privately owned while the state, municipalities, and federal government own 99 percent. Ms. Vern, in regard to the duck shacks and the personal use cabins, opined that the state could solve many issues by allowing the owners to purchase the property. She said that when [the duck cabins and personal use cabins] were built back in the 1950s and 1960s, the state was in chaos in terms of land ownership.

[4:31:19 PM](#)

LAWRENCE ALBERT, Attorney at Law, representing Mr. Gillis, opined that DNR's online record keeping of long-term commercial leases isn't adequate. However, the Alaska Lands Act, AS 38.05.070-38.05.075, authorizes leasing of state lands. He, too, referred to Article VIII, Section 1, of the Alaska State Constitution. Mr. Albert, speaking on behalf of Mr. Gillis and

other professionally licensed guides who have headquarter sites on state lands, expressed the need for a state policy and program to allow long-term leases of up to 55 years in order to have stability and the tenure to recapture the investment. The aforementioned was of concern to the legislature in 1984 when it amended the Alaska Lands Act via AS 38.05.035(f). However, he submitted that over the past 25 years DNR hasn't done anything to administer the project and has essentially withheld any information to the public regarding opportunities to acquire permits, leases, and potentially purchase the land. Therefore, he requested that the committee inquire of DNR's policies regarding commercial leases on state lands. There is no information on DNR's web site regarding opportunities or programs for acquiring commercial leases on state lands.

[4:35:11 PM](#)

MR. MYLIUS began by saying that this meeting feels a bit like a DNR bashing session. He then pointed out that the issues related to Mr. Gillis and those who have issues with boroughs aren't related to the [personal use] cabin [permits]. He further pointed out that over the last 50 years, DNR has transferred over 1 million acres of state land to private individuals through land sales. Most of the lands sales have been competitive land sales, which are open to all Alaskans equally. None of the satisfied customers who have purchased state land have been heard from. The department has also transferred about 1.4 million acres of state land to municipal governments, specifically for lands to generate revenues and control development. He noted that the committee also won't hear from any [of the municipal governments] as they would gladly accept more land, particularly land with leases. Mr. Mylius highlighted that DNR follows the constitution, statutes, and regulations while also believing that all Alaskans should be treated equally such that all Alaskans provided equal opportunity to purchase and use state lands.

[4:37:02 PM](#)

MR. MYLIUS turned to the PUCP program. He confirmed that DNR has changed its interpretation of the PUCP regulation, but explained that it's because there's no basis in law or regulation that allows the acceptance of late applications. The 1984-1985 regulation specifically says that individuals must apply within 90 to 120 days of the expiration of the permit. The permits expire every six years. The change was to follow

the regulation and not make exceptions that DNR doesn't have the authority to do.

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MR. MYLIUS, regarding the suggestion to offer longer term permits or sell the land, reminded the committee that these cabins were originally built in trespass on state lands. He further reminded the committee that the legislature chose to offer a one-time authorization to make such cabins legitimate. If the PUCP program is converted to a land sale program, it would essentially tell Alaskans to build a cabin on a prime piece of land and 25 years from now the legislature will develop a program to sell the land to Alaskans doing so. Such a policy encourages trespassing on state land in Alaska. The land sale program, however, is a method by which to have land placed in private ownership in a permanent, long-term fashion. In response to an earlier question, Mr. Mylius informed the committee that 14 percent of Alaska land is privately owned, including land owned by Native corporations. In fact, Alaska has one of the highest per capita ownership of private land in the nation.

[4:41:07 PM](#)

MR. MYLIUS turned to the leasing issues that were raised. With regard to Mr. Gillis' lease, Mr. Mylius confirmed that Mr. Gillis has a 25-year lease from DNR. The land on which the lodge sits was identified by the Aleutians East Borough under its municipal entitlement. The land on which Mr. Gillis' lodge sits met the requirements of the law for transfer to the borough. A public process was followed and the transfer of the land to the borough was determined appropriate. Mr. Mylius opined that such land is the type of land the legislature determined is appropriate to transfer to boroughs. He reminded the committee that one of the goals is to transfer land to the boroughs such that they generate revenue. How the boroughs determine to manage their land is the borough's prerogative. Mr. Mylius pointed out that Mr. Gillis is in litigation with DNR and the borough over his parcel. Mr. Gillis is arguing that there is a particular preference, sales statute right, for which he believes he qualifies. He further argues that although that land is transferred to the borough, Mr. Gillis believes the statute applies to the borough. The Alaska Superior Court rejected the aforementioned arguments and the matter is now on appeal at the Alaska Supreme Court.

4:43:14 PM

SENATOR OLSON opined that if [what has been described by witnesses today] is what DNR does, then DNR should be bashed. Senator Olson expressed concern that the state is destroying structures that can be used in survival situations. He then asked if Mr. Mylius has any comment regarding the charge that DNR asked Mr. Gillis to burn two cabins, one at Sandy River and one at Ilnik.

MR. MYLIUS responded that he isn't familiar with those cabins or any order to burn them, and therefore offered to seek more information on that matter.

4:44:30 PM

SENATOR MEYER expressed concern with Mr. Gillis' case, specifically since Mr. Gillis originally leased the land from the state, which then transferred it to the borough. Prior to the land being transferred to the borough, Mr. Gillis had invested over \$1 million in improvements in the land. If the borough doesn't want to extend the lease or want to charge a large amount for the lease, he asked if the state or the borough would be obligated to purchase the improvements Mr. Gillis made on the land.

MR. MYLILUS confirmed that the improvements made by Mr. Gillis are his and he would have the opportunity to remove them or negotiate a deal with a new leasee, if the land is sold to a different party. With regard to the borough, the transfer is subject to the lease. Mr. Mylius said that he didn't know the borough ordinances regarding such a transfer.

SENATOR MEYER suggested that perhaps there should be review of the options in such a situation. He further suggested that there needs to be protection of those who decide to go this route.

4:47:39 PM

CHAIR KELLER requested that committee members make recommendations to his office regarding any further action the committee should take regarding cabins.

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REPRESENTATIVE GATTO said that he could see individuals crafting improvements that can't be taken with the individual. He asked if the state put up the property for bid, would it have to pay the owner for the improvements being left behind. He characterized it as an issue of fairness because it's not possible to reimburse individuals for some improvements.

[4:49:01 PM](#)

CHAIR KELLER remarked that there was no intention to bash DNR, the committee was merely seeking information. He said he understood the feelings of those who have invested time in these properties.

Proposed Regulations Relating to Cheese Production

[4:49:42 PM](#)

CHAIR KELLER turned the committee's attention to the proposed cheese regulations. He then related that there's a consensus of the majority of the committee members to send a letter to the director of the Division of Environmental Health. The letter proposes that negotiated rule making processes available in statute be used so that DEC can work with interested parties to develop regulations that provide an exemption for small dairy producers.

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KRISTIN RYAN, Director, Division of Environmental Health, Department of Environmental Conservation, said the division would have to evaluate the proposal in the letter as an option. However, she pointed out that the cheese regulations are already halfway through the process, and thus she would have to evaluate the steps involved with the proposal to determine whether it's possible.

CHAIR KELLER remarked that he would appreciate that Ms. Ryan review [the proposal in the letter] and [if necessary] start the regulation process over.

[4:52:17 PM](#)

ADJOURNMENT

There being no further business before the committee, the Administrative Regulation Review Committee meeting was adjourned at 4:52 p.m.