

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

February 8, 2021

3:30 p.m.

MEMBERS PRESENT

Senator Joshua Revak, Chair
Senator Peter Micciche, Vice Chair
Senator Click Bishop
Senator Gary Stevens
Senator Natasha von Imhof
Senator Jesse Kiehl
Senator Scott Kawasaki (via teleconference)

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

OVERVIEW: ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 (ANILCA)

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

TINA CUNNING, ANILCA Consultant
Anchorage, Alaska

POSITION STATEMENT: Provided an overview of ANILCA.

ACTION NARRATIVE

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CHAIR JOSHUA REVAK called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Bishop, Kawasaki (via teleconference), Kiehl, Micciche, Stevens, and Chair Revak.

**OVERVIEW: Alaska National Interest Lands Conservation Act of
1980 (ANILCA)**

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CHAIR REVAK announced the committee will hear an overview about ANILCA from an ANILCA training expert, Ms. Tina Cunning. Ms. Cunning has many years of ANILCA experience and has done many prior trainings for the legislature.

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TINA CUNNING, ANILCA Consultant, Anchorage, Alaska, said her overview is not a training, noting a typical ANILCA training involves two full days. She added her organization has done shorted sessions with the legislature and she welcomes the opportunity to come back.

She said she works as an ANILCA consultant since retiring as the ANILCA Program Director with the Alaska Department of Fish and Game (ADF&G).

She addressed the slide, Presentation Outline. She said she will provide a bit of history leading into ANILCA—noting committee members had a presentation the previous week from Mr. Mylius regarding Alaska's land and water issues leading up to ANILCA.

She explained her presentation will provide committee members with some background of all the deal making that went on in crafting ANILCA—which [Congress] passed in 1980—then an introduction at the very highest level to cover key parts, provisions, amendments, and the mechanics of ANILCA 40 years later.

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She referenced the slide, National Perspective, noting there was an environmental awareness wave in Congress at the time of ANILCA that included a lot of bipartisan work among delegations to pass related landmark legislations. Passage of ANCSA reflects that same awareness in its Section 17(d)(1), Section 17(d)(2), and Section 17(a).

She noted slide for the Alaska Native Claims Settlement Act of 1971 (ANSCA). She explained with Section 17(a)(1) in ANCSA, Congress established the Joint Federal-State Land Use Planning Commission. The commission involved State and federal agencies, and ANCSA Corporations representatives—who recently achieved their goal of major land claims settlements.

MS. CUNNING pointed out committee members heard—via Mr. Mylius' presentation—that the U.S. Secretary of Interior (Secretary) froze State lands selections a few years prior to ANCSA while seeking settlement of the Native lands claims.

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She referenced the slide, ANCSA Section 17(d)(1) and Section 17(d)(2). She explained while passage of ANCSA intended to free up lands for selections, ANCSA also withdrew lands from selection—Section 17(d)(1). The Secretary received authorization to withdraw lands from all forms of mineral entry, leasing, classification study, and the land withdrawals. The Section 17(d)(1) withdrawals do not expire and includes possible reclassification and rebooking by the Secretary at any time.

She noted ANCSA Section 17(d)(2) directed the Secretary to withdraw up to 80 million acres from State and ANCSA selections, and other activities, to study for Congress the designation of conservation system units (CSUs), and establish a 7-year deadline by 1978 for the withdrawals to expire.

She summarized just 12 years after statehood and at the same time as the Native organizations were just winning their legislation to allow for land selections, the ANCSA sections froze both out of large area selections during the study process by the Joint Federal-State Land Use Commission. Lobbying by various delegations occurred towards passage of what became ANILCA.

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She addressed the slide, Stakeholders and Interests. She explained everyone that had been involved in passage of ANCSA then pivoted to working on reaching a conclusion to the Section 17(d)(2) provisions. The environmental community in both nationally and in Alaska had been very successful in those previous years in getting legislation like NEPA and the EPA passed, and they viewed Alaska as the last major wilderness. They wanted as much acreage as possible—during this time there was no internet, so meetings, newsletters, teleconferences where the source of information.

She noted Alaskans were greatly concerned—having just achieved statehood—that the large withdrawals were going to restrict their way of life, their economic and social future, and the interests like the timber industry, mining, and the ANCSA corporations; all were worried about the impacts of the withdrawal areas on access to develop their own lands and have

an economic future that they thought the federal government promised.

MS. CUNNING said the governor's office established a Washington, DC office to assist Congress. There were staff from the State and ANCSA Corporations who were present to provide information on access and key areas where industries were located. The Citizens for the Management of Alaska Lands formed to help lobby Congress and many others were involved in participating in the hearings, testimony, and providing information to Congress.

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SENATOR STEVENS asked her who was Alaska's governor and congressional delegation at that time.

MS. CUNNING replied, Governor Hammond and the congressional delegation was Senator Gravel, Senator Stevens, and Congressman Young.

She addressed the slide, Dozens of "(d)(2)" Bills Introduced, and noted in 1974, U.S. Secretary of the Interior [Rogers Morton] introduced a 40-page bill specific to addressing creating CSUs; from 1974-1977, most of the bills stayed within that approximate range that had been set up under Section (d)(2) to withdraw up to 80 million acres for study.

She noted in 1977, Congressman Udall introduced HR 39, a bill which significantly changed the game. Instead of up to 80 million acres, HR 39 proposed 115 million acres of new CSUs and 145 million acres of "instant wilderness." That would have been old and new CSUs and all the existing units in Alaska including the Tongass Forest would be instantly wilderness. That changed the approach everyone was taking towards the "(d)(2)" bill.

She said from 1977-1978, Alaska's congressional delegation changed its focus from trying to get smaller land withdrawals to focusing on protecting the public uses that were so important for Alaskans and Alaska's future. In 1978, Senator Gravel filibustered the bill that reached the floor, so Congress adjourned without having passed the legislation in the fall of 1978. She pointed out that the "(d)(2)" legislation in ANCSA required that the withdrawals expire in 1978.

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She addressed the slide, Actions Preceding Expiration of December 1978 "(d)(2)" Withdrawals. With Congress going home without having passed the bill, in November 1978, U.S. Secretary

of the Interior [Cecil D. Andrus] withdrew 110 million acres through authorization under the Federal Land Policy Management Act (FLPMA). In December 1978, President Carter converted 56 million acres of those 110 million acres into 17 national monuments under the Antiquities Act.

MS. CUNNING said Alaskans did not know exactly what allowable activities could occur within national monuments. There were park rangers approaching trappers in the field telling them they could not trap, and local residents told they could not use snow machines. She noted she lived in Glen Allen at the time and there were [Bureau of Land Management] (BLM) protests to not lock Alaskans out. The national monuments during the Carter Administration resulted in Alaska's congressional delegation focusing even more firmly on the needed uses of those federal lands while the coalition and environmental groups increased their lobbying for more land in the CSUs.

She noted early in 1979, the governor put together an advisory team of ANCSA representatives, industry, even Alaska conservationists to come up with some consensus points about what they needed in the final legislation. They worked with the legislature and came up with the first six points that are on this next slide, the seven consensus points.

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She explained the slide, 1979 Governor and State Legislature adopted Seven Consensus Points, "The Alaska Position." Governor Hammond worked out the first six points and the legislature added the seventh point, the "no more" clause, insisting that there be no more large withdrawals of federal lands from general public uses in Alaska. In 1979 the delegation actively lobbied for these points in their hearings and debates in Congress.

She addressed the slide, Final Steps to Passage 1979-1980. She explained there were more markups, hearings, negotiations, and a lot of deal cuttings that is not always good for legislative history records. In August of 1980, the Senate passed HR 39—the bill process involved substitutes, but everybody wanted HR 39 to be name. The Senate passed HR 39 in August 1980. The bill was similar in size to the House bill that failed in 1978, but there were more protections for Alaskans such as provision for traditional access and activities on federal lands.

She detailed in November 1980, President Carter lost the election and within the remaining three weeks of a lame duck Congress, the House passed the Senate version of HR 39 on

November 21, 1980, and Congress adopted a concurrent resolution on December 1, 1980 to fix a couple things that were missing. President Carter signed ANILCA on December 2, dubbed "the great compromise." At the bill signing, President Carter said, "Now Alaskans can get on with their land selections and their lives."

MS. CUNNING noted some people asked why U.S. Senator Stevens did not vote against passage of HR 39—in those days Congress was respectful regarding single state legislation—the delegation opposed not moving the bill forward. U.S. Senator Stevens' response was if the bill had not passed—with all the built-in comprehensive compromises protecting Alaska's public uses—then the balancing enshrinement would not have occurred and endured, and that would have left future battles for Alaska's lands for subsequent congresses.

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She referenced the slide, Presentation Outline, to address ANILCA itself and breakdown its components. Most people view ANILCA as lands legislation that set aside large swathes of general BLM and U.S. Forest Service (USFS) public use lands into CSUs.

She detailed the slide shows the breakdown of ANILCA by pages and percentages. Approximately 25 percent of the bill is the establishment of the CSUs and special areas, but 30 percent of the bill balances those designations with specific provisions for protecting public uses and traditional activities. Forty-two percent amends ANCSA and the Alaska Statehood Act—within nine years of passage of ANCSA. Amendments within the bill addressed problems that cropped up during ANCSA's implementation—42 percent of the bill contains those amendments.

She referenced the slide, ANILCA's Organization, Four Basic Parts. There are 15 titles in ANILCA that she groups into four major parts for training purposes. The introductory material—which is the definitions—the purposes of the act, etcetera, applies to most of the Act—understanding that section is fundamental to understanding the rest of the Act.

She said the second grouping is the establishment for the expansion of CSUs within areas, Titles 2-7, that created the parks, refuges, expanded existing parks and refuges, and created the special BLM areas, etcetera. The third grouping are the special Alaska provisions. The fourth grouping are the amendments to ANCSA and the Alaska Statehood Act.

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MS. CUNNING addressed the slide, Title I—Purposes, Definitions, and Maps. She explained Title I established Congress' intent in passage of the ANILCA to preserve the unique areas, certain values, and uses—all detailed in Title I. Congress wanted to provide the opportunity for rural residents to continue their subsistence way of life, and explicitly noting not wanting any more land set aside through the Antiquities Act. ANILCA represented a proper balance of uses and conservation.

She said the definitions within ANILCA are very important, noting over the years having to always go back and look at the definitions. Two of the definitions really stand out for the public to understand and one is the definition of "public land."

She explained ANILCA defines "land" as being land, waters, and interests therein; "federal land" as land in which the title is in the federal government; and "public land" as federal land with some provisions related to the status of the selections by the State and the Native Corporations. Since those selections are almost all in the tentatively approved or "IC process" now, the distinction between federal lands and public lands is very minor—almost interchangeable.

She said the definition of CSUs refers to the parks, refuges, wild and scenic rivers, the national trails, and the wilderness areas. However, CSUs do not include the two BLM special areas, the Steese and the White Mountains National Conservation and Recreation Areas. Always going back to the definition of CSUs is important because it does not include the "study areas" designated for wilderness and several other designations. When looking through specific provisions in ANILCA, where the provision applies is important—whether public or CSU lands.

She explained the third section of Title I is the "Maps Section." She said [Section 103] resulted from meetings and markup sessions where they basically used grease pencils to draw lines. The final maps that accompany the passage of ANILCA are what control the acreage of the new units. Prior to map archival, the Department of Natural Resources (DNR) had the foresight to get photographs of the ANILCA maps that shows exactly where those boundaries were—the maps are accessible on the DNR website.

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She said one of the important parts of Section 103 is that the boundaries for the new areas—Glacier Bay, Katmai, and many of

the other units that are in the coastal areas—do not extend seaward beyond mean high tide to take in the State's tidelands and submerged lands. Sometimes the maps have a line out in the water for the new areas, but the legal boundary description ends at mean high tide.

MS. CUNNING noted one of the significant parts of Section 103 is that Congress authorized the agencies to do minor boundary adjustments and land exchanges without going back to Congress for approval. Part of the reason for that authorization was due to the areas' extensiveness and the possibility for missing some element. For example, designating a small portion in a wilderness area for a railroad hub does not qualify, so the agency could adjust the boundaries to where necessary.

She said the third part of Section 103 is Section 103(c), a section which has been in court. Section 103(c) says only federal land within the CSU boundaries are public lands, the State and private lands acquired by the United States that are within those boundaries can become part of the CSU, but the CSU regulations only apply to the federally owned lands and waters within that; this was an extremely important point for both the ANCSA Corporations and the State in the passage of ANILCA, and this issue was the key focus of the Sturgeon lawsuit.

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SENATOR MICCICHE said his understanding is that all coastal lands between mean high water and down title zone is State land.

MS. CUNNING answered correct, except where there may have been pre-statehood withdrawals—a topic Mr. Mylius went through with the committee the previous week. For example, Glacier Bay—which has been the court—the boundary for the original Glacier Bay unit does extend seaward, but where ANILCA added land northward up towards the Yakutat area, the boundary ends at mean high tide. There are some units on the Alaska Peninsula where the "grease pencils" are a little bit offshore. Several years ago, the U.S. Department of Interior published some corrections to their maps noting that the intention for boundaries of the new units was to end at mean high tide, but the department has not corrected all the mappings.

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SENATOR MICCICHE noted the Sturgeon case was about navigable waters that does not require tidal influence to be State navigable.

MS. CUNNING answered yes, but the two scenarios are different issues. The Sturgeon decision by the U.S. Supreme Court was very clear that the regulations for the management of CSUs applies only to the federally owned lands.

SENATOR MICCICHE replied her answer is fine for now.

MS. CUNNING replied she can do a session some day for the committee on ownership and management.

SENATOR MICCICHE said he can ask additional questions offline. He said he is particularly interested in that part of ANILCA because he thinks that is where the State had the greatest struggle on State management on submerged lands.

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MS. CUNNING referenced the slide, Title II-National Park System. She explained Titles II-VII create the CSUs and special areas. The first one, Title II, is the National Park System. Under Title II, Congress established 10 new national parks in Alaska, expanded 3 existing units, and did not touch or address two of the units-Sitka and the Klondike.

She said the 15 units that ANILCA specifically addressed, Title II established independent purposes for each unit-they are different for each of those park units. Title II established the acreage and key directions for the administration of the parks and preserve units, including additional directions for the administrations of the park and preserves in Title XIII.

She explained Title XIII applies to many of the CSUs and [inaudible] federal lands-not referenced in each of the CSU titles for each of the units. She remarked, "One not only looks at the title, for this case park system to Title II, but you also have to check for the provisions that are in the other titles and particularly Title XIII to see what might be specific and be applied to the park units." That is why each slide reminds people to double check.

She noted one of the significant provisions required management plans for all park units to lay out what is allowable, existing conditions, access, and future access needs. Congress said the plan development required consultation with the public, Corporations, other adjacent land managers, and the State of Alaska, and all subsequent management plan revisions required the same degree of consultation; this is very important and that is where the management direction for the units gets set.

MS. CUNNING said there are several other provisions, and each unit has specific purposes and uses. Title II is where Congress made its authorization determination for Ambler Road after it made a public interest finding—after much debate like many other things in ANILCA.

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She referenced the slide, Title III—National Wildlife Refuge System. Congress established 9 new National Wildlife Refuges, modified 7 of the existing refuges, and established statutory purposes for each of the 16 National Wildlife Refuges—acreage and individual provisions. Again, Congress required management plans and revisions in consultation with the public, land owners, State, and Native Corporations. The management plans were supposed to specify the uses considered compatible with the statutory purposes—something unique to the refuge system—just like the park system had provisions for upland support of commercial fishing.

She noted in 1997, Congressman Young was one of the primary authors of the Refuge Improvement Act which established additional administrative directions for the refuge systems. Administrative provisions within ANILCA melded into the Refuge Improvement Act, but its last section says ANILCA prevails where there is a conflict between the two acts. She said she wishes the Alaska congressional delegation would always keep in mind that when there is legislation that comes along that could potentially conflict with ANILCA that it includes that kind of [inaudible] clause.

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She addressed the slide, Title IV—National Conservation and National Recreation Areas. She noted BLM was losing vast amounts of its acreage to other agencies for CSUs, and Congress decided to establish two special areas, the Steese and the White Mountains—in the Fairbanks area; they are not CSUs, they are "areas." When looking at public uses in other parts of ANILCA and where they apply, one must take care to verify if a CSU says "area" as well. She noted there are special provisions for the Steese, and White Mountains related to allowing mining and other activities in those areas.

She referenced the slide, Title V - National Forest System, and noted Congress expanded the Chugach and the Tongass National Forests—expansively. Congress withdrew parts of the Chugach from the mining laws and created two special areas in the Copper

River area. Expanding the Tongass was a hard-fought struggle leading up to its passage. Congress also established two national monuments, Misty Fjords and Admiralty Island Monument. Out of those they carved some specific provisions for "unperfected mining claims," and to allow, for example, the Greens Creek mining operation. There are numerous provisions for land exchanges with the land ownership, [Admiralty Island National Monument] was really complicated.

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MS. CUNNING addressed the slide, Title VI - National Wild and Scenic River System. Congress designated 25 wild and scenic rivers as wild, scenic, or recreational. Sometimes people refer to 26 wild and scenic rivers in Alaska, but there is only 25—a portion of the Alagnak River ran within a National Park and BLM land, ANILCA listed the river twice.

CHAIR REVAK asked her to repeat the name of the river.

SENATOR KIEHL remarked Ms. Cunning said the Alagnak River.

MS. CUNNING noted the Situk River—near Yakutat—the Secretary received a recommendation to list the river for designation. However, the community in the Yakutat was concerned due to the fisheries and timber in their area. In the end, the regional USFS forester, the governor of Alaska, Tak-Tat Kwaan, and the Borough and City of Yakutat signed a four-party agreement. The cooperative agreement called for all parties to work together on managing the corridor instead of a wild and scenic river designation. The Secretary agreed and officially withdrew the designation recommendation.

SENATOR STEVENS asked her to name the river listed twice as a wild and scenic river.

MS. CUNNING answered the river is the Alagnak River, it flows out of Katmai National Park and Preserve, designated in both the park and outside of the park in BLM land.

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She said Title XI expressly amends the Wild and Scenic Rivers Act, which is important in Alaska. For example, the Gulkana Wild and Scenic River has a pipeline and roads. Congress clearly stated when establishing wild and scenic river boundaries that those boundaries only include the federal land within those boundaries. The statute lays out several administrative provisions like management planning, no mining within a half

mile of the wild river designation, and no State mining selections or appropriations on the federal lands that are within two miles of rivers while studies were going on.

MS. CUNNING said several other amendments to the Wild and Scenic River Act are important, but the piece about only applying to the federal land is important to Alaskans. She noted when considering the Gulkana River, the Ahtna Native Regional Corporation owns a third of the river, BLM owns a third, and the State owns a third plus the riverbed; that is why Congress makes it very clear.

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She referenced the slide, Title VII - National Wilderness Preservation System. She explained Congress designated eight wilderness areas that overly National Park units, and their boundaries do not necessarily follow the same boundaries as the park boundaries. There are 13 wilderness areas in the refuges, and 14 in the Tongass Forest. Congress designated a wilderness study area in the Chugach, the Nellie Juan—the Chugach Management Plan was just out again for another revision.

She said the interesting provision that was part of the balancing act of ANILCA when designating 14 wilderness areas in the Tongass at that time, Congress also mandated that the Secretary make 4.5 million board feet of timber available each year—4.5 billion board feet per decade—in the Tongass for harvest. While carving out big chunks of the Tongass for wilderness designation and monuments, Congress also wanted to protect the harvest of timber. ANILCA also prohibited the Secretary from conducting further statewide "roadless review" in Alaska and there are several other provisions related to the administration of wilderness area units.

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She addressed the slide regarding examples for ANILCA's unprecedented special wilderness provisions that only apply in Alaska. The provisions address old methods of access, activities, and facilities that Alaskans were concerned about for traditional harvest and subsistence activities. Various provision pieces within ANILCA that apply to wilderness designated lands includes new and existing cabins, facilities for research, access to inholding, and even the ability to develop transportation and utility systems across those areas.

She said while 25 percent of the federal lands in Alaska are designated wilderness by ANILCA, many traditional existing

activities accessed federal lands; however, Congress directed "shall be allowed" to establish regulations and processes for those activities not normally allowed in wilderness areas. The special provisions for uses of the federal lands in Alaska is approximately 30 percent of ANILCA.

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MS. CUNNING explained the slide, Title VIII - Subsistence Management and Use. She said Title VIII is unique, there are only a couple other titles in ANILCA where Congress made individual findings, laid out what their policy intent was for management, and specified definitions that apply to Title VIII.

She said the intent of Title VIII was to provide a preference for the opportunity for customary and traditional subsistence use among other consumptive uses by a rural residence on the federal land. The title lays out several important pieces related to local and regional participation in the regulatory process, authorizes the federal secretaries to regulate harvests, and directs the Secretary to conduct monitoring of the subsistence priority; Congress made it permissive for the State to administer this section—this is the first part of Title VIII—and it granted unique provisions related to coordination between the State and federal government. However, Title VIII is not all about subsistence harvest, Title VIII is a complicated title.

She noted Title VIII has an important provision, Section 810, which requires all federal land management decisions—other decisions also—receive evaluation for their impacts on subsistence; that is a process where federal agencies go through whenever they are doing their management planning and making other decisions.

She said one of the significant parts of Title VIII that was very important to all Alaskans was Section 811, which says, "The Secretary shall permit the traditional methods of access for subsistence uses." This is not traditional subsistence uses, this is traditional methods of access and there is a special rulemaking for defining the methods, application, and closure.

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She said the slide, Title X - Federal North Slope Lands Studies, Oil and Gas, included North Slope lands studies—done in the 1980s—and the establishment of Sections: 1001, 1002, 1003 for areas of prohibition on oil and gas development in the Arctic Refuge. Title X has several provisions related to research and

some important provisions related to oil and gas leasing in the non-wilderness portions. Congress amended Title X several times.

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CHAIR REVAK announced Senator von Imhof has joined the committee meeting.

SENATOR KIEHL asked her if there is difference between the terms "wilderness study" and "wilderness review."

MS. CUNNING replied the two terms are essentially the same. The agencies review their lands for wilderness characteristics when they are doing various management planning. The Nelle Juan Study Area was specifically set aside as a study area, so there are some ANILCA provisions that are different for wilderness study areas, but that would not include areas strictly reviewed for possible wilderness characteristics under the general management planning process.

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She addressed the slide, Title XI - Transportation and Utility Systems (TUS) in and Across, and Access into, Conservation System Units. She noted Title XI was a huge part of the lobbying effort by the State, Native Corporations, and the various interests in Alaska during the passage of ANILCA.

She remarked when looking at a map of the state and the establishment of the CSUs, a person could hardly get across the state without crossing a CSU; Congress debated this extensively and tried to determine whether to set aside corridors across CSUs for future transportation needs and utilities. Congress ended up establishing a unique application process for TUS rights of way across the CSUs including wilderness areas. The application process is unique and does not exist anywhere in the United States in CSUs.

She noted there have been a lot of myths about the TUS process—people even in the Federal Highway Administration have thought TUS process does not actually work, which is just simply not true. She noted ANILCA training sessions dedicate about two hours on TUS access provisions and how they work.

She explained there are two decision processes under the TUS section, one in which an agency has authority to grant rights of way and then the decision process for those agencies who do not have authority to grant right of way or it is within wilderness. There is specific criteria and processes for how to handle the

applications, how NEPA fits into it, the agency standards, how they fit into the approval or disapproval process, and the determination of a lead agency. There is an appeal process for disapproved TUS applications to the President and Congress.

MS. CUNNING said the TUS process was important because that would be the only way in the future to get between communities, get utilities and water line corridors between communities, or to get to existing infrastructure.

She noted the other provision listed in the slide, Section 1109, is a section that basically said anyone who had a valid existing right prior to the passage of ANILCA, the Act does not disturb that valid existing right, it continues.

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She said two provisions within Title XI were part of ANILCA's balancing act, Section 1110(a), and Section 1110(b). Section 1110(a) permits the use of snow machines, motor boats, airplanes, and nonmotorized surface transportation for traditional activities. The regulations adopted in 1986 to implement the section are very true to the provisions of Section 1110(a). There are 43 CFR Part 36 regulations, and they have a lot of great language in the preamble and responsive comments. She suggested anyone who is dealing with access issues on these areas to either look those regulations up and find the response to comments, 43 CFR Part 36, or contact one of the ANILCA trainers for additional information.

She stated essentially what Congress said in Title XI is the federal lands are open to the specified activities and methods of access until closure under a set of criteria with a process that involves hearings and finding of damage. Also, including locals was very important in for decision making.

She said Section 1110(b), the other piece to special access, is unique. The section does not occur anywhere else, its language guarantees the State and private land owners adequate and feasible access for economic other purposes.

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She referenced the slide, Title XII - Federal-State Cooperation. She said Title XII is a unique title in federal lands legislation in that it steps up an expectation of federal-State cooperation. Based on the recommendations of the Joint Federal State Land Use Planning Commission, ANILCA established an Alaska

Land Use Council—sunsetting after 20 years, but renewal is possible.

MS. CUNNING explained Title XIII is a catchall of many administrative provisions. The title authorizes the federal agencies to acquire land within the CSUs, and grandfathered cabins and other facilities of occupancy on the CSUs, BLM areas, and USFS lands. In the 1970s, delegations in Washington, DC read the popular book, "Coming into the Country," and they were keen on the protection of traditional lifestyles that involved using structures so that people could continue their way of life on federal lands. Title XIII has many unique provisions that includes important things—especially in this day and age—to allow navigation aids and establishing other facilities on CSUs. Title XIII also rescinded 1978 to 1980 Public Land Orders—these were the two withdrawals and monuments.

She referenced the slide, Title XV - National Need Mineral Activity Recommendation Process. She noted the federal government has never applied Title XV, but because people were concerned the size of the units might make mining rare elements difficult, the title's process allows the President to open an area for rare minerals. However, the President cannot use the title in the Arctic Refuge or in the national park units, but it can be in other CSUs. There is a whole process laid out for expediting congressional review and rulemaking to meet the need for mining rare elements.

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She explained the slide, ANILCA's Organization, the fourth section that addresses amendments to ANCSA and the Alaska Statehood Act—Title IX and Title XIV. The amendments in the fourth section were almost half of ANILCA. She pointed out that at the time, statehood was recent—just over a decade—and ANCSA enacted nine years earlier. There were already parts of implementation about the Alaska Statehood Act and ANCSA that needed fixes and those are in those sections of ANILCA.

She referenced the slide, Title IX - Implementation of Alaska Native Claims Settlement Act (ANCSA) and Alaska Statehood Act. She explained there are many amendments in Title IX. One of the important things for the State in Title IX was that once U.S. Department of Interior had approved transfer under the tentative approval (TA) provisions—transfer of land for the State under the State selection process—the federal government treated the State as the landowner. She noted up to that time, federal

agencies continued to manage the TA lands transfers and conflicts arose and Title IX straightened that out.

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MS. CUNNING addressed the slide, Title XIV - Amendments to ANCSA and related provisions—37 Sections amend ANCSA. She said one of the key things was fire protection, a great concern to the ANCSA Corporations. There is a provision that the federal wildland fire protection continues for ANCSA lands.

She noted there is a corollary to Title IX in which the interim conveyed lands to the Native Corporations where essentially treated the same as if they had ownership. Some of the lands that had been interim conveyed, the Native Corporations wanted to do things with them, but the banks would not loan money on those lands until the federal government surveyed the land. This provision of ANILCA established that once they get into the interim conveyance processes and only waiting for the survey, the Native Corporations could treat the land as though they hold title.

She addressed the slide, Justice Kagan in *Sturgeon II* described ANILCA's compromises. She noted Justice Kagan confirmed ANILCA's compromises where she said:

ANILCA sought to 'balance' two goals, often thought conflicting...So if, as you continue reading, you see some tension within the statute, you are not mistaken: It arises from Congress's twofold ambitions.

She explained that was to set aside the large areas for protection as well as to protect these Alaskan uses.

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She referenced the slide, Three Acts Interrelated, and noted her ANILCA overview emphasized several times that the three Acts—Alaska Statehood Act, ANCSA, and ANILCA—are very interwoven and "tier off" each other. The State's entitlement with the Alaska Statehood Act was over 100 million acres, and ANCSA with an entitlement of over 44 million acres—which will actually be over 46 million acres when completed.

She noted at times there are different numbers shown for CSU acreage, anywhere from 103 [million acres] to 106 [million acres], and a lot of that is based on the technology for calculating acreage has changed over the years. However, the implementation of the three Acts is still very interconnected.

MS. CUNNING said she has completed the introduction of ANILCA and will move into some key provisions and exhibit how ANILCA stacks up against the governor and legislature's seven consensus points.

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She referenced the slides, 1979 Governor and State Legislature Adopted Seven Consensus Point, "The Alaska Position;" and the slide, ANILCA Addresses Alaska Interests. She noted the slides for addressing Alaska interests have bullet points that list what people believe ANILCA resolved that were among those things that the governor and legislature were lobbying for.

She detailed ANILCA retained all the ANCSA land entitlements already selected inside the ANILCA units, and approved State selections that were outside of the ANILCA units. However, the State gave up some selections that were inside some of the units, but ANILCA adjusted the boundaries for high resource areas necessary for development that previous bills excluded.

She said there are special provisions in ANILCA for mining, recognizing the continuous of traditional activities on federal lands, and authorizing the agencies to conduct land exchanges and boundary adjustments—the "no more" large withdrawals—without congressional approval was one of the big ones.

She referenced the slide, Summary of "No More" clause(s). She explained the ANILCA administrative prohibitions includes the executive branch cannot withdraw more than 5,000 acres unless Congress passes a resolution within one year of their wanting to not nominate it. Also, no further studies of federal lands for the single purpose of establishing new conservation designations without congressional authorization.

She reiterated Title VII is the wilderness title that there be no further statewide roadless area reviews for national forest wilderness designation.

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She said the slide, ANILCA addresses Alaska interests (continued), references the new process for future transportation utility corridors, provided for the Tongass timber harvest, and included the 14 new wilderness areas and monuments as part of the balancing act. ANILCA provided for local hire—this is one of the most amended sections of ANILCA—and guarantees access to inholdings.

MS. CUNNING detailed the slide, ANILCA Sections 1110(b), noting the slide shows the two sections of ANILCA that guarantee access to inholdings. Section 1110(b), which is for the CSUs, and Section 1323, which is USFS and BLM lands. There are over 2 million acres of inholdings within the park system and over 17 million acres of inholdings within the wildlife refuge units—this access to inholdings is incredibly important.

She said the slide, ANILCA Section 1110(b) (continued), is an example of right of way on the Kenai Refuge to provide access for the [Cook Inlet Region, Inc.] (CIRI) to its subsurface estate. She noted inholdings are both surface and subsurface and her expectation is over the next few decades there are going to be many more applications to the agencies for access to subsurface estates in refuges.

She detailed the third slide in the series, [ANILCA Section 1110(b) (continued)], references the interests that are fundamentally important to the State in retaining its State management of fish, wildlife, and water.

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SENATOR VON IMHOF noted she made a comment regarding CIRI looking for right away access and the expectation there will be more requests for access by Native Corporations in the future.

She asked her to expand on her comment regarding more requests and her thoughts on how the Biden Administration is going to respond or are the requests a state issue.

MS. CUNNING replied, the request for access is in statute—Section 1110(b)—Congress guaranteed access to the non-federal lands, both surface and subsurface, for their current and future uses for their economic future. Section 1110(b) was an important part of the balancing act in ANILCA that both the State and the Native Corporations lobbied hard for because it was of no use to the Native Corporations or to the State to own land that it could not develop or use.

She detailed Congress set up the guarantee of access, but there are rules for approval. The request must have the most minimum possible impact on CSUs. She noted there are going to be more applications in the future where many landowners—particularly subsurface estate owners—who do not know what resources they own, just like with oil and gas, and mining. For example, needing an access road to access a subsurface estate that

minimizes surface impact in a refuge, but [Section 1110(b)] guarantees lands access.

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SENATOR STEVENS noted she said, "It is sort of guaranteed." He asked her what the application process is for approval.

MS. CUNNING explained a case that involves development is different from someone who is just trying to get an access to their cabin. The process is entirely different depending upon the magnitude of the inholdings' needs. Cases like CIRI involves a special form, applications, a lot of meetings, and assessments on alternatives worked out between the party and the agency. The intent is to minimize the impact to the unit while still providing the guarantee of access. However, there is no access guarantee if there is an adequate and feasible access some other way. Just because the person wants to cross a CSU does not mean they are going to get that permission if there is another economically feasible alternative.

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SENATOR STEVENS said in general, if an organization owns the land that could be profitable to mining or whatever, those applications will receive approval.

MS. CUNNING answered yes.

She noted the third slide that continues to address "Alaska interests," the State retains management of fish, wildlife, and water. That was a huge impetus for statehood to get management of fish and wildlife out of the hands of the Seattle processors and the Washington, DC bureaucrats; this was a major lobbying effort by the State and the Alaska Native Brotherhood in Southeast Alaska to get statehood and have State management of fish and wildlife.

She said given statehood in 1959, there was a great deal of concern under ANILCA that when it passed the State does not lose any of its authorities for management of fish and wildlife. There is a section in ANILCA, Section 1314, which confirms that nothing in ANILCA affects the responsibility and authority of the State for the management of fish and wildlife except as specifically provided in Title XIII. Title XIII authorizes federal regulation of harvest to assure the subsistence preference for the rural residents on federal land.

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SENATOR KIEHL noted he has attended some of his Alaska Native Brotherhood Camp 70 meetings where there is a lot of "grumpiness" with the State over access to subsistence resources. He noted she previously flagged the Title VIII federal authority to regulate.

He asked her if ANILCA sets up a structure for guaranteeing State management while federal management for subsistence exists.

MS. CUNNING answered there is a misunderstanding about what the term "management" means. Management under the Alaska State Constitution is assuring the sustainability of fish and wildlife populations and that authority is more than just allocating harvests, it is a significant responsibility to assure the health and sustainability of those populations, even in cases where Congress has diminished. However, Congress can and does diminish state authorities for all 50 states. For example, the Marine Mammal Protection Act took away the State's authority to allocate harvest of marine mammals, but the State still has a responsibility to assure the sustainability and that is why they still monitor marine mammal populations and work closely with the federal agencies that do allocate harvests to protect populations as they go up and down.

She said the same is true with the federal subsistence program via the Office of Subsistence Management. She noted during her ANILCA trainings that she spends an hour explaining the relationship between the authority under Title VIII for regulation for the subsistence preference on federal lands, and the State's authorities for management of fish and wildlife; it is complicated and sometimes tested when people do not understand the terms of the statute, there is a piece in the ANILCA training that is specific to it that lays out the differences between the State and federal authority—it is a lot of misunderstanding and a lot of myths.

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She referenced the slide, Presentation Outline, which shows all the things hoped for from ANILCA. U.S. Senator Stevens saw that after ANILCA passed, Alaska got about 85 percent of what it wanted in ANILCA, and he intended to go back and get the rest—but the Magnuson-Stevens Act may have distracted him.

She noted the slide, Select Major Amendments to ANILCA. She said 40 years has passed since the passage of ANILCA, but Congress has amended ANILCA many times. She said, "Do not believe the

myth that people tell you that ANILCA cannot be amended because it has been." She added she has a compilation of ANILCA amendments for trainings that is 53 pages long.

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MS. CUNNING said regarding a few of the major amendments to ANILCA, after passage in 1980, there were 11 laws that amended ANILCA between 1981-1988. Probably the first major amendment occurred in 1988—often referred to as Alaska's Submerged Lands Act—this section in the amendment deleted all of Section 901 of ANILCA—this is in the amendments to ANCSA's section of ANILCA.

She noted the amendment was important because the BLM calculations for submerged lands affected the acreage calculation for Native Corporations entitlements. If BLM included land under water ways that turned out to be navigable and thus State owned later—after receiving the sign off for their land entitlement—they would not be able to come back and replace those lost lands elsewhere. This section of ANILCA clarifies how they do the acreage calculations to leave the submerged lands out of those acreage calculations where there is a major waterway, and there are a few other changes in there too.

She stated the most significant amendment in the eyes of people who had been involved in ANILCA's passage was the Tongass Timber Reform Act in 1996—this is 10 years after passage of ANILCA. Congress removed the provision for the 4.5 billion board feet per-decade supply of timber in Section 705 and created 12 new [land use designation] (LUDs); these are special management areas under the National Forest Management Act. The amendment also created five additional wilderness areas, modified the long-term contracts, and created stream riparian buffers. The amendment was huge due to its undoing of the balancing act between the wilderness areas and the timber harvest industry.

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She said in 2014, another major amendment was the Sealaska Land Entitlement, which completed the Sealaska Corporation's entitlement. The amendment created an additional eight LUDs in the Tongass and made some other changes.

She noted in 2017, Congress amended three sections of ANILCA via the Tax Cuts and Jobs Act; this is the Arctic Refuge changes which requires the Secretary to conduct 2 lease sales in 10 years in the non-wilderness Coastal Plain and authorizes development of less than 2,000 acres for that.

SENATOR BISHOP asked her who led the charge on the repeal of the Tongass Timber Reform Act.

MS. CUNNING answered she did not know but will get back to the senator with an answer.

SENATOR STEVENS asked her if there is a conflict with the "no more" land provision within the Tongass Timber Reform Act.

MS. CUNNING replied, "What Congress giveth, Congress can taketh away." Congress said no more administrative withdrawals, but Congress can make its own withdrawals.

SENATOR VON IMHOF remarked, "You can say that about government in general, government giveth and government taketh away."

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MS. CUNNING explained the provisions are congressional. Congress passed ANILCA but then came along 10 years later and changed the terms, and Congress will continue to do that.

SENATOR STEVENS asked her to confirm that the Tongass Timber Reform Act did change the "no more" land set aside.

MS. CUNNING explained the negotiated "no more" provisions did the balancing act in ANILCA. However, the "no more" provisions of ANILCA are still in effect and not modified, but the [Tongass Timber Reform Act] changed the balance in terms of what would be wilderness and what would be in harvest areas on the Tongass.

She addressed the slides, "What is involved in implementation of ANILCA?" and the "Alaska Land Use Council." She said Jay Hammond—having been involved through the Federal-State Land Planning Commission processes and the lobbying into ANILCA—was very supportive of cooperative management. He believed if the leadership in Alaska—federal and State agencies and the Native Corporations—sat down together they could resolve a lot of these issues eye to eye across the table.

She said the ANCSA Corporations were involved—noting she served as a staff committee member to the Alaska Land Use Council—this council was very effective in dealing with issues that came up, tried to keep the issues out of court, worked on management plans and regulations, and attempted to ensure things were consistent with the intent of ANILCA.

MS. CUNNING noted a couple of years ago, Senator Murkowski proposed legislation to reauthorize the Alaska Land Use Council. The people who are all part of the Alaska Land Use Council at the time wanted to see it reauthorized, but the legislation never made it in. Senator Murkowski proposed some legislation a few years ago, but there has not been a groundswell to get the council reauthorized.

She referenced the slide, Public Involvement in ANILCA Implementation. She noted at the time ANILCA passed, there was a Land Use Advisors Committee set up as a forum to provide public input into the Land Use Council's recommendations and decisions related to federal actions—it sunsetted along with the council. The ANCSA Corporations had an organization of their land managers who worked alongside the State in dealing with lands decisions, shared information with the Corporations, and served as staff to the Lands Council Staff Committee.

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She addressed the slide, Citizens' Advisory Commission on Federal Areas (CACFA)—the third organization. The legislature created CACFA as an avenue for the public to deal with red tape to understand how management plans work to help get help getting their cabin permits, etcetera. The legislature reauthorized CACFA in 2014 with a sunset in June 2021. CACFA has not been active because of budget cuts started in 2015 and 2016, but the legislature could reauthorize the commission.

She noted CACFA was a very effective organization that worked directly with federal agency leaders and with the Alaska congressional delegation. For example, when the Federal Office of Personnel Management decided local hire was out of date and was not going to be a provision in Alaska anymore, they were able to go back and get an amendment to ANILCA that made it clear it still provided local hire provisions.

She addressed the slide, State Agencies' Involved in ANILCA Implementation. She said in 1981 the legislature funded a special budget for involvement in ANILCA implementation. Governor Hammond established a structure to be involved with the Alaska Land Use Council and retained his Washington, DC office, and setup an ANILCA team to coordinate State agencies' involvement in management plans. The slide provides a web link to that office—which is still in existence today. The website has a searchable copy of ANILCA, a compilation of its amendments, and access to all the State's correspondence since 2000 to provide a history of the State's involvement.

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MS. CUNNING referenced the slide, State ANILCA Program Coordination location of statewide coordination function. She said the diagram on the slide explains how the ANILCA program coordination worked, how it was set up, and how it has continued to work. Governor Hammond was not big on creating new government and assigned the program within the line agencies where a future administration could not chop the program.

She detailed the Alaska Department of Fish and Game (ADF&G) assumed the program coordination function in 1981, noting she was the first coordinator. The program coordination function moved to Governor Sheffield's Division of Governmental Coordination in 1984. Since 2003—after Governor Murkowski moved it—program coordination has been in the [Office of Project Management and Permitting] (OPMP), but its effectiveness is based on the cooperation of all the State agencies participating together in coordinating unified responses for consistency with ANILCA and requires an understanding of not only ANILCA but also the federal land laws and regulations.

She noted the slide, Federal land use plans and regulations—ANILCA requires ongoing consultation. She said the first thing everybody worked on was management plans and the revisions that came along.

She referenced the slide, Status—ANILCA's Implementation 40 years later. She said there is not the same degree of cooperation and consultation that there used to be in the revisions—information reported to her, noting her retirement of 11 years.

She explained the slide, The Arctic Refuge—an illustrated guide to the evolution of land management planning, shows how the plans have evolved over time. The slide illustrates the Arctic Refuge plans from 1971, 1988, and 2015—making it very difficult for the public, the State, the Native Corporations, and the stakeholders to keep up with things.

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She referenced the slide: Example: "No more" clauses, noting the slide provides an example of what happens over time. Even though Congress intended there be no more administrative withdrawals, there are what people regard as de facto CSUs created when the agencies make special planning designations to manage areas as though they are designated wilderness when they are not, and to

limit activities and permits for commercial services, etcetera. Based on those values, it has increasingly created some problems for the public and the commercial operators.

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MS. CUNNING addressed the slide, "Cabins, Temporary Facilities, and Other Structures." She said the chart on the slide from the Citizens Advisory Commission shows how the agencies are interpreting the cabin provision of ANILCA differently from agency to agency. When brought to the Alaska congressional delegation's attention, the agencies agreed to try to work together to come up with a better guidance consistent with ANILCA in implementation of the cabin policies.

She noted the slide, Challenges of ANILCA Implementation, and its difficulty due to a loss of institutional memory and understanding of ANILCA—and a collective knowledge among Alaskans in general. Also, there was the loss of the Alaska Land Use Council—still felt today—and the loss of key negotiators that knew what the deal was that the State struck with Congress. Increased direction comes out of Washington, DC that does not necessarily reflect an understanding of ANILCA, and decreased information on what the traditional uses were in 1980 that Congress was intending to protect.

She said the final slide, Keeping the Promises in the Compromises, quotes Justice Kagan from the Sturgeon case as follows:

This Act provides sufficient protection for the national interest...and at the same time provides adequate opportunity for the satisfaction of the economic and social needs of the State of Alaska and its people.

She noted Justice Kagan's quote was right out of ANILCA but keeping the promises in the compromises that Congress passed in ANILCA is up to everyone.

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SENATOR STEVENS agreed with her and said he wished more Alaskans understood [what Congress told Alaska via ANILCA.] He noted the "no more land" set aside and said the legislature insisting on the "no more" clause is remarkable, noting he wonders what would have happened without the clause. He asked her if the "no more" clause has been relatively successful, noting the clause has not been totally successful.

MS. CUNNING replied her opinion is the language in ANILCA has prevented additional large withdrawals out of the general BLM and USFS lands.

SENATOR STEVENS remarked, "Kudos to the Alaska Legislature."

MS. CUNNING pointed out the statutes says that the administration cannot make any more of those large withdrawals, more than 5,000 acres.

[4:53:08 PM](#)

CHAIR REVAK thanked Ms. Cunning for her ANILCA overview and the importance of understanding what happened and where Alaska currently is at. He said he imagines the legislature is going to have to deal with some issues related to ANILCA. He stated she "hit the nail on the head" when she said that we were losing a lot of this memory related to the deals made for Alaska's lands.

He noted his intention for the slide show is to provide a reference to committee members to quickly find provisions in ANILCA when dealing with issues related to Alaska's lands. Also, Ms. Cunning said that she would be available for follow up and answer questions.

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There being no further business to come before the committee, Chair Revak adjourned the Senate Resources Standing Committee meeting at 4:54 p.m.