

HB

295

SB 225 and HB 295: Grant of State Land to the University of Alaska

Prepared by Department of Natural Resources, January 2010

Summary of Bills: Transfer 199,838 acres of state land to the University of Alaska and address the March 2009 Alaska Supreme Court ruling that struck down previous university land grant legislation (2005 HB 130 and 2000 SB 7), which dedicated land revenue to the University Endowment Trust. These bills convey the entire HB 130 land list as amended by the legislature, ratifies conveyances already in place, and directs land revenue to the General Fund instead of the university's endowment trust.

The land to be conveyed includes:

- 29 parcels located throughout SE Alaska
- 5 parcels in Southcentral, including tract at McCarthy in Wrangell St Elias National Park
- 18 parcels in Interior – including tracts along the Dalton Highway, the 90,000 acre Nenena oil/gas tract, and numerous educational properties.

The bills also:

- Exclude from transfer 9 parcels in SE that were withdrawn by the legislature in 2005 due to public opposition;
- Identify 9 parcels in SE that would go to UA only if not selected by new Boroughs as part of municipal entitlements;
- Include specific language addressing the March 2009 Supreme Court ruling and a one-year statute of limitations period.

The March 13, 2009 Supreme Court Decision

- The Alaska Supreme Court in *S.E. Alaska Conserv'n Council v. State*, 202 P.3d 1162 (Alaska 2009) held that 2000 SB 7 and 2005 HB 130 violated the dedicated funds clause of the Alaska Constitution by dedicating land revenue to the University's endowment trust
- The Court held that the trust provisions of the legislation reflected the key intent of the legislature to enhance the University's permanent endowment and therefore were not severable from the land conveyance provisions.
- The Court upheld provisions of the legislation that conveys a research forest (near Tanana) to the University because the research forest is not income property and was addressed independently in the legislation. The Court declined to address the other non-income properties on the conveyance list (which included miscellaneous educational and infrastructure properties).

Related Legislation

- House Bill 234 would convey 12 of the approximately 50 parcels on the HB 130 land list, including the noncontroversial educational properties and the Nenana oil and gas tract.

For more information contact:

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Explanation of Changes to CRA CS for HB295

1. Technical fix from EDU Committee amendment to remove Mite Cove and add back portion of the Pelican parcel. Page 8, line 22, Mite Cove is added to list of parcels removed. **Page 9, lines 29-31**, portion of Pelican parcel is added in place of Mite Cove. **Dick Mylius of DNR is here to speak to this change.**
2. **Page 9& 10**, - Covenants added to Sumdum parcel. After consideration of comments from DNR, including Judith Bittner who is the Chief History and Archaeology State Historic Preservation officer, and comments from the general public, and from adjacent land owner Sealaska, it was decided by the co-chairs to allow the Sumdum parcel to be allowed to transfer to the University with specific covenants to maintain cultural & historical characteristics of the area. **Dick Mylius of DNR is here to describe the covenants and answer any questions.**

(excuse Mr Mylius if he has come forward)

3. **Page 8, lines-23, 24,25-** 3 parcels in upper Southeast are added here, Excursion Inlet, Lynn Canal, and William Henry Bay. These parcels were pulled from the land bill on behalf of Representative Thomas. With us is **Planning Commissioner Robert Venables from the Haines Borough, on behalf of Borough Mayor, who can speak to these particular parcels.**
4. Page 8, line 26, 27-Adds the Tenakee Springs parcel surrounding the Boat Harbor area to the list of parcels to be removed from transfer. **Rep. Munoz can explain this removal.**

26-GH2829P
Bullock
3/8/10

CS FOR HOUSE BILL NO. 295(CRA)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

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

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **FINDINGS AND PURPOSE.** The legislature finds that

10 (1) an academically strong state university system is a cornerstone to the long-
11 term development of a stable population and to a healthy, diverse economy in the state;

12 (2) article VII, sec. 2 of the Constitution of the State of Alaska provides that
13 the University of Alaska shall have title to all real property conveyed to it and that the

1 legislature shall prescribe how university property shall be administered according to law;

2 (3) article VIII, sec. 9 of the Constitution of the State of Alaska authorizes the
3 legislature to provide for the grant of state lands and interests in those lands;

4 (4) it is in the best interests of the state and the University of Alaska that the
5 university take ownership of a significant and substantial portfolio of land in order to further
6 the interests of public higher education and economic development in the state;

7 (5) renewable resources should be managed on a sustained yield basis, taking
8 into account the total land grant;

9 (6) transferring to the University of Alaska a significant and substantial
10 portfolio of land furthers the interests of public higher education by allowing campus
11 development and expansion, by facilitating academic research, and by fostering economic
12 development for the well-being of the University of Alaska and the state;

13 (7) the Alaska Supreme Court's ruling in Southeast Alaska Conservation
14 Council v. State, 202 P.3d 1162 (Alaska 2009) invalidated ch. 136, SLA 2000 and ch. 8,
15 FSSLA 2005 because depositing revenues from land conveyed to the University of Alaska in
16 the university endowment trust fund violated the dedicated funds section, art. XI, sec. 7, of the
17 Constitution of the State of Alaska; the Alaska Supreme Court also held that, with the
18 exception of the provision conveying the university research forest, the land conveyance
19 provisions of the legislation could not be severed from the provisions that dedicated the
20 revenue from the land to the university's endowment trust, and ordered that any land
21 conveyed to the University of Alaska under the legislation be reconveyed to the state;

22 (8) it is in the best interests of the state and the University of Alaska to

23 (A) address directly the Alaska Supreme Court's ruling and enact
24 curative legislation that conveys land to the University of Alaska without the
25 unconstitutional dedication of revenue from the conveyed land to the University of
26 Alaska's endowment trust; and

27 (B) authorize conveyance to the University of Alaska of the same land
28 identified in ch. 8, FSSLA 2005;

29 (9) the state and the University of Alaska have expended substantial effort and
30 money in connection with conveying lands to the university under ch. 136, SLA 2000 and ch.
31 8, FSSLA 2005 before the Alaska Supreme Court's ruling in Southeast Alaska Conservation

1 Council v. State, 202 P.3d 1162 (Alaska 2009), and it is in the best interests of the state and
2 the University of Alaska to preserve that effort and money by ratifying the conveyances that
3 had occurred before the Alaska Supreme Court ruling;

4 (10) through the amendment of AS 14.40.491 to explicitly define as university
5 receipts the revenue received by the University of Alaska from lands conveyed to the
6 university under AS 14.40.365, the legislature retains unfettered discretion to appropriate
7 university receipts as it sees fit, without restrictions, on an annual basis; and that preserving
8 the legislature's discretion to appropriate the receipts on an annual basis is in the best interests
9 of the University of Alaska and the state.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 **LEGISLATIVE INTENT.** It is the intent of the legislature

13 (1) to respond to the Alaska Supreme Court's ruling in Southeast Alaska
14 Conservation Council v. State, 202 P.3d 1162 (Alaska 2009), by passing legislation that
15 conveys land to the University of Alaska and provides for management of revenue from that
16 land as university receipts over which the legislature retains unrestricted authority to
17 appropriate as it sees fit;

18 (2) to ratify the conveyances that were executed under ch. 136, SLA 2000 and
19 ch. 8, FSSLA 2005 before the Alaska Supreme Court's ruling so that the university retains
20 clear title to that land;

21 (3) if any provision of this Act or the conveyance of any parcel of land or class
22 of lands under this Act is found to be an unlawful dedication of funds in violation of art. IX,
23 sec. 7 of the Constitution of the State of Alaska or otherwise unlawful, that the land
24 conveyances to the University of Alaska under this Act continue to the fullest extent possible;

25 (4) that the University of Alaska receive clear title to the land identified in
26 AS 14.40.365, even though proceeds from those lands are not deposited into the University of
27 Alaska's endowment trust fund and are instead subject to appropriation by the legislature each
28 year in its discretion, without prior limitation upon the legislature's use and appropriation of
29 the funds; and

30 (5) to have a stable University of Alaska system that provides a wide range of
31 land-related curricula and extracurricular activities, including those activities that enhance

1 civic partnerships through community-based land management; expansion of campuses and
2 training sites; and land management for economic development and benefit to the University
3 of Alaska and the state.

4 * **Sec. 3.** AS 14.40.170(a) is amended to read:

5 (a) The Board of Regents shall

6 (1) appoint the president of the university by a majority vote of the
7 whole board, and the president may attend meetings of the board;

8 (2) fix the compensation of the president of the university, all heads of
9 departments, professors, teachers, instructors, and other officers;

10 (3) confer such appropriate degrees as it may determine and prescribe;

11 (4) have the care, control, and management of

12 (A) all the real and personal property of the university; and

13 (B) land

14 (i) conveyed to the Board of Regents by the
15 commissioner of natural resources in the settlement of the claim of the
16 University of Alaska to land granted to the state in accordance with the
17 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
18 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

19 (ii) conveyed to [THE BOARD OF REGENTS IN
20 TRUST FOR] the University of Alaska by the commissioner of natural
21 resources under AS 14.40.365;

22 (5) keep a correct and easily understood record of the minutes of every
23 meeting and all acts done by it in pursuance of its duties;

24 (6) under procedures to be established by the commissioner of
25 administration, and in accordance with existing procedures for other state agencies,
26 have the care, control, and management of all money of the university and keep a
27 complete record of all money received and disbursed;

28 (7) adopt reasonable rules for the prudent trust management and the
29 long-term financial benefit to the university of the land of the university;

30 (8) provide public notice of sales, leases, exchanges, and transfers of
31 the land of the university or of interests in land of the university;

1 (9) administer, manage, market, and promote a postsecondary
2 education savings program, including the Alaska Higher Education Savings Trust
3 under AS 14.40.802 and the Alaska advance college tuition savings fund under
4 AS 14.40.803 - 14.40.817.

5 * Sec. 4. AS 14.40.291(a) is amended to read:

6 (a) Notwithstanding any other provision of law, university-grant land, state
7 replacement land that becomes university-grant land on conveyance to the university,
8 land conveyed to [THE BOARD OF REGENTS IN TRUST FOR] the University of
9 Alaska under AS 14.40.365, and any other land owned by the university is not and
10 may not be treated as state public domain land. Land conveyed to [THE BOARD OF
11 REGENTS IN TRUST FOR] the University of Alaska under AS 14.40.365 shall be
12 managed in accordance with [AS NONTAXABLE TRUST LAND UNDER]
13 AS 14.40.365 - 14.40.367 and policies of the Board of Regents.

14 * Sec. 5. AS 14.40.365 is repealed and reenacted to read:

15 **Sec. 14.40.365. University land grant.** (a) Except as provided in (b) of this
16 section, no more than two years after the effective date of this Act, the commissioner
17 of natural resources shall convey to the University of Alaska, by quitclaim deed, the
18 state land identified for conveyance to the university and described in the document
19 titled "University of Alaska Land Grant List 2005," dated January 12, 2005.

20 (b) As soon as practicable after June 30, 2055, the commissioner of natural
21 resources shall convey to the University of Alaska, by quitclaim deed, the state land
22 described as the "University Research Forest" and identified for conveyance to the
23 university in the document titled "University of Alaska Land Grant List 2005," dated
24 January 12, 2005.

25 (c) As soon as practicable after the receipt of patent from the United States,
26 but not before the land is otherwise required to be conveyed under this section, the
27 commissioner of natural resources shall convey to the University of Alaska, by
28 quitclaim deed, federal land that has been selected for conveyance to the state under
29 the Alaska Statehood Act but is subject to a federal mining claim, and that is identified
30 in the document titled "University of Alaska Land Grant List 2005," dated January 12,
31 2005, for conveyance to the university upon the state's acquisition of patent.

1 (d) Notwithstanding AS 38.05.125(a), and except as otherwise provided in this
2 section, the transfer of ownership of land from the commissioner of natural resources
3 to the University of Alaska under this section includes the interest of the state in the
4 coal, ores, minerals, fissionable materials, geothermal resources, and fossils, oil, and
5 gas that may be in or on the land.

6 (e) Land conveyed under this section to the University of Alaska is subject to
7 any valid possessory interest or other valid existing right, including any lease, license,
8 contract, prospecting site, claim, sale, permit, right-of-way, Native allotment, or
9 easement held by another person, including a federal, state, or municipal agency, on
10 the effective date of this section.

11 (f) Before conveying land under this section, the commissioner of natural
12 resources shall reserve access under AS 38.05.127, but other provisions of AS 38.04
13 and AS 38.05 do not apply to the commissioner's preparation for conveyance of land
14 to the University of Alaska under this section. In addition to access under
15 AS 38.05.127, the commissioner may reserve in the conveyance document existing
16 offshore uses such as aquatic fish farm sites, anchorages for vessels, fish buying
17 stations, trails, roads, and other access routes that provide public access to adjacent
18 land and public waterways; however, an easement along tidewater reserved by the
19 commissioner under AS 38.05.127 may not exceed 25 feet.

20 (g) In addition to rights or an interest held by a person under (e) of this
21 section, land conveyed to the University of Alaska under this section

22 (1) is subject to

23 (A) sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat.
24 339);

25 (B) AS 19.10.010;

26 (C) any easement, right-of-way, or other access under former
27 43 U.S.C. 932 (sec. 8, Act of July 26, 1866, 14 Stat. 253);

28 (D) the provisions of any memorandum of agreement entered
29 into between the University of Alaska and the commissioner of natural
30 resources governing shared benefits or costs associated with land to be
31 conveyed to the University of Alaska;

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(E) any interest transferred to the state by quitclaim deed dated June 30, 1959, under authority of the Alaska Omnibus Act (P.L. 86-70, 73 Stat. 141); and

(2) excludes the mineral estate on land that is subject to a valid state mining claim.

(h) As soon as practicable after the extinguishment, release, or expiration of a valid state mining claim located on land to be conveyed under this section, but not before the land is otherwise required to be conveyed under this section, the commissioner of natural resources shall convey the mineral estate excluded from conveyance under (g)(2) of this section.

(i) The responsibility for the management of land conveyed to the University of Alaska under this section vests with the Board of Regents for the University of Alaska on the date of recording that conveyance.

(j) Any income derived from land conveyed to the University of Alaska under this section accruing after the date of conveyance, including any income accruing from an existing lease, license, contract, prospecting site sale, permit, right-of-way, easement, or trespass claim shall be received by the University of Alaska and accounted for as university receipts.

(k) Notwithstanding any other provision of this section, within 10 years after final conveyance of land under this section, the Board of Regents may reconvey to the Department of Natural Resources land

(1) containing hazardous waste that was present on the land before conveyance under this section;

(2) on which is located a historic or archeological site that is subject to management under AS 41.35; or

(3) that the Board of Regents and the commissioner of natural resources jointly agree is in the best interests of the state and the university to reconvey.

(l) After the effective date of this section and before the conveyance of a parcel of land to the University of Alaska under this section, the commissioner of natural resources may not convey, without consent of the university, any irrevocable

1 interest in a parcel that is required to be conveyed to the University of Alaska under
2 this section.

3 (m) The commissioner of natural resources may make minor adjustments to
4 the maps or legal descriptions of the state land identified for conveyance to the
5 university and described in the document titled "University of Alaska Land Grant List
6 2005," dated January 12, 2005, to correct omissions or errors.

7 (n) Notwithstanding (a) of this section, the following state land described in
8 the document titled "University of Alaska Land Grant List 2005," dated January 12,
9 2005, may not be conveyed to the University of Alaska under this section:

- 10 (1) Parcel Number CS.DI.1001, Duke Island;
- 11 (2) Parcel Number MF.1002, Idaho Inlet;
- 12 (3) Parcel Number CS.KI.1001, Kelp Island;
- 13 (4) Parcel Number HA.CH.1001, Haines-Chilkoot;
- 14 (5) Parcel Number KT.1004, Neets Creek;
- 15 (6) Parcel Number MA.KR.1001, Kodiak Rocket Range;
- 16 (7) Parcel Number ST.1002, Pelican, except that the portion of Parcel
17 Number ST.1002, Pelican that is described as unit C-18 in the Northern Southeast
18 Area Plan adopted by the commissioner of natural resources on October 15, 2002, may
19 be conveyed to the University of Alaska subject to (q) of this section;
- 20 (8) Parcel Number PA.1001, Port Alexander;
- 21 (9) Parcel Number ST.1002, Warm Springs Bay;
- 22 (10) Parcel Number MF.1001, Mite Cove;
- 23 (11) Parcel Number NS.EX. 1002, Excursion Inlet;
- 24 (12) Parcel Number JU.1002, Lynn Canal;
- 25 (13) Parcel Number JU.1001, William Henry Bay; and
- 26 (14) the portions of United States Survey 2459 and United States
27 Survey 6855 that are within Parcel Number ST.1003, Tenakee Springs.

28 (o) Notwithstanding (a) of this section, the state land identified in this
29 subsection and described in the document titled "University of Alaska Land Grant List
30 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
31 under this section if the land is included in a borough formed before July 1, 2012, that

1 includes Petersburg. If a borough is not formed before July 1, 2012, land described in
2 this subsection shall be conveyed to the University of Alaska on July 1, 2012. If a
3 borough is formed before July 1, 2012, and the borough does not select land described
4 in this subsection before January 1, 2016, the land not selected by the borough shall be
5 conveyed to the University of Alaska on June 30, 2016. The following land is subject
6 to this subsection:

- 7 (1) Parcel Number SD.1001, Beecher Pass;
- 8 (2) Parcel Number SD.1001, Favor Peak;
- 9 (3) Parcel Number CS.TL.1001, Three Lake Road;
- 10 (4) Parcel Number SD.1001, Read Island;
- 11 (5) Parcel Number SD.1001, Whitney Island.

12 (p) Notwithstanding (a) of this section, the state land identified in this
13 subsection and described in the document titled "University of Alaska Land Grant List
14 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
15 under this section if the land is selected by the City and Borough of Wrangell. If the
16 borough does not select land described in this subsection before January 1, 2013, the
17 land not selected by the borough shall be conveyed to the University of Alaska on
18 June 30, 2013. The following land is subject to this subsection:

- 19 (1) Parcel Number CS.EW.1001, Earl West Cove;
- 20 (2) Parcel Number CS.OV.1001, Olive Cove; and
- 21 (3) Parcel Number SD.1001, Thoms Place.

22 (q) Notwithstanding (a) of this section, the state land identified in this
23 subsection and described in the document titled "University of Alaska Land Grant List
24 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
25 under this section if the land is included in a borough formed before July 1, 2012. If a
26 borough is not formed before July 1, 2012, the land described in this subsection shall
27 be conveyed to the University of Alaska on July 1, 2012. If a borough is formed
28 before July 1, 2012, and the borough does not select land described in this subsection
29 before January 1, 2016, the land not selected by the borough shall be conveyed to the
30 University of Alaska on June 30, 2016. The following land is subject to the provisions
31 of this subsection: that portion of Parcel Number ST.1002, Pelican that is described as

260 acres

Essential
Public
Services

1 unit C-18 in the Northern Southeast Area Plan adopted by the commissioner of natural
2 resources on October 15, 2002.

3 (r) The state land identified as Parcel Number SD.1001, Sumdum in the
4 document titled "University of Alaska Land Grant List 2005," dated January 12, 2005,
5 that is transferred to the University of Alaska in (a) of this section,

6 (1) may not be open to commercial timber harvest or mineral
7 development;

development including but not ltd. to ✓

8 (2) must be preserved for the purpose of historical, cultural, and
9 scientific research and education and must be accessible for public interpretive study
10 and education;

11 (3) may not be used for a purpose inconsistent with the significance of
12 the parcel and adjoining land for the preservation of Alaska Native cultural knowledge
13 and history.

(4) It is intended that these covenants run with the land

14 * Sec. 6. AS 14.40.366 is repealed and reenacted to read:

15 **Sec. 14.40.366. Management requirements for university land.** (a) Before
16 the conveyance or the disposal of an interest in the land to a third party, land conveyed
17 to the University of Alaska under AS 14.40.365 shall be managed in a manner that, to
18 the extent practicable, permits reasonable activities of the public, including historic
19 recent public uses, that do not interfere with the use or management of the land by the
20 university.

21 (b) For land conveyed to the University of Alaska under AS 14.40.365, the
22 Board of Regents shall

23 (1) seek public comment on proposals for land development,
24 exchange, or sale; and

25 (2) adopt policies that require the preparation of land development
26 plans and land disposal plans.

27 (c) Before the Board of Regents of the University of Alaska offers a parcel of
28 land for sale under this section, the board shall offer first refusal to the closest
29 municipality.

30 (d) The Board of Regents shall adopt policies requiring public notice before
31 approval of land development plans and land disposal plans. The policies must require

1 that the notice be provided not less than 30 days before the proposed action and that
2 the notice be

3 (1) sent to local legislators, municipalities, and legislative information
4 offices in the vicinity of the action and at other locations as the university may
5 designate;

6 (2) published in newspapers of general circulation in the vicinity of the
7 proposed action at least once each week for two consecutive weeks; and

8 (3) published on state and university public notice Internet websites.

9 (e) In this section, "development, exchange, or sale" does not include the grant
10 of an easement or right-of-way or the development of a campus facility.

11 * Sec. 7. AS 14.40.367 is repealed and reenacted to read:

12 **Sec. 14.40.367. Confidential records.** Notwithstanding AS 40.25.100 -
13 40.25.295 (Alaska Public Records Act), on a determination that it is in the best interest
14 of the University of Alaska or on the request of the person who has provided the
15 information, the president of the university may keep the following confidential:

16 (1) the name of a person applying for the sale, lease, or other disposal
17 of university land or an interest in university land;

18 (2) before the issuance of a notice of intent to award a contract relating
19 to a sale, lease or disposal of university land or an interest in university land, the
20 names of the participants and the terms of their offers;

21 (3) all geological, well, geophysical, engineering, architectural, sales,
22 market, cost, appraisal, timber cruise, gross receipts, net receipts, or other financial
23 information relating to university land or an interest in university land and considered
24 for, offered for, or currently subject to disposal or a contract;

25 (4) cost data and financial information submitted by an applicant in
26 support of applications for bonds, leases, or other information in offerings and
27 ongoing operations relating to management of university land;

28 (5) applications for rights-of-way or easements across university land;
29 and

30 (6) requests for information about or applications by public agencies
31 for university land that is being considered for use for a public purpose.

1 * **Sec. 8.** AS 14.40 is amended by adding a new section to read:

2 **Sec. 14.40.369. Statute of limitations.** A person may not bring any judicial
3 action challenging AS 14.40.365 - 14.40.367 or any conveyance authorized under
4 AS 14.40.365 unless the action is commenced no later than one year after the effective
5 date of this Act.

6 * **Sec. 9.** AS 14.40.400(a) is amended to read:

7 (a) The Board of Regents shall establish a separate endowment trust fund in
8 which shall be held in trust in perpetuity all

9 (1) net income derived from the sale or lease of the land granted under
10 the Act of Congress approved January 21, 1929, as amended; and

11 (2) [NET INCOME DERIVED FROM THE SALE, LEASE, OR
12 MANAGEMENT OF THE LAND CONVEYED TO THE BOARD OF REGENTS
13 IN TRUST FOR THE UNIVERSITY OF ALASKA UNDER AS 14.40.365;
14 HOWEVER, THE AMOUNT DEPOSITED IN THE ENDOWMENT TRUST FUND
15 UNDER THIS PARAGRAPH RESULTING FROM MINERAL LEASE
16 ROYALTIES AND ROYALTY SALES PROCEEDS MAY NOT BE LESS THAN
17 25 PERCENT OF ALL SUCH MINERAL LEASE ROYALTIES AND ROYALTY
18 SALES PROCEEDS RECEIVED BY THE UNIVERSITY; AND

19 (3)] monetary gifts, bequests, or endowments made to the University
20 of Alaska for the purpose of the fund.

21 * **Sec. 10.** AS 14.40.491 is amended to read:

22 **Sec. 14.40.491. Definition of university receipts.** In AS 14.40.120 -
23 14.40.491, "university receipts" includes

- 24 (1) student fees, including tuition;
25 (2) receipts from university auxiliary services;
26 (3) recovery of indirect costs of university activities;
27 (4) receipts from sales and rentals of university property;
28 (5) federal receipts;
29 (6) gifts, grants, and contracts;
30 (7) receipts from sales, rentals, and the provision of services of
31 educational activities; [AND]

1 (8) receipts attributable to amounts distributed from university
2 endowments established and managed under AS 14.40.280 and from the endowment
3 trust fund established and managed under AS 14.40.400; **and**

4 **(9) receipts from lands conveyed to the University of Alaska by the**
5 **commissioner of natural resources under AS 14.40.365.**

6 * Sec. 11. AS 29.45.030(a) is amended to read:

7 (a) The following property is exempt from general taxation:

8 (1) municipal property, including property held by a public corporation
9 of a municipality, [OR] state property, **property of the University of Alaska**, or land
10 that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L.
11 84-830, 70 Stat. 709, except that

12 (A) a private leasehold, contract, or other interest in the
13 property is taxable to the extent of the interest;

14 (B) notwithstanding any other provision of law, property
15 acquired by an agency, corporation, or other entity of the state through
16 foreclosure or deed in lieu of foreclosure and retained as an investment of a
17 state entity is taxable; this subparagraph does not apply to federal land granted
18 to the University of Alaska under AS 14.40.380 or 14.40.390, [OR] to other
19 land granted to the university by the state to replace land that had been granted
20 under AS 14.40.380 or 14.40.390, **or to land conveyed by the state to the**
21 **university under AS 14.40.365;**

22 (C) an ownership interest of a municipality in real property
23 located outside the municipality acquired after December 31, 1990, is taxable
24 by another municipality; however, a borough may not tax an interest in real
25 property located in the borough and owned by a city in that borough;

26 (2) household furniture and personal effects of members of a
27 household;

28 (3) property used exclusively for nonprofit religious, charitable,
29 cemetery, hospital, or educational purposes;

30 (4) property of a nonbusiness organization composed entirely of
31 persons with 90 days or more of active service in the armed forces of the United States

1 whose conditions of service and separation were other than dishonorable, or the
2 property of an auxiliary of that organization;

3 (5) money on deposit;

4 (6) the real property of certain residents of the state to the extent and
5 subject to the conditions provided in (e) of this section;

6 (7) real property or an interest in real property that is exempt from
7 taxation under 43 U.S.C. 1620(d), as amended;

8 (8) property of a political subdivision, agency, corporation, or other
9 entity of the United States to the extent required by federal law; except that a private
10 leasehold, contract, or other interest in the property is taxable to the extent of that
11 interest unless the property is located on a military base or installation and the
12 property interest is created under 10 U.S.C. 2871 - 2885 (Military Housing
13 Privatization Initiative), provided that the leaseholder enters into an agreement to
14 make a payment in lieu of taxes to the political subdivision that has taxing authority;

15 (9) natural resources in place including coal, ore bodies, mineral
16 deposits, and other proven and unproven deposits of valuable materials laid down by
17 natural processes, unharvested aquatic plants and animals, and timber.

18 * Sec. 12. AS 29.65.030(d) is repealed and reenacted to read:

19 (d) For the purpose of determining the general land grant entitlement under (a)
20 of this section, the maximum total acreage of vacant, unappropriated, unreserved land
21 within the boundaries of the municipality between the date of its incorporation and
22 two years after that date shall be increased by the amount of land located within the
23 boundaries of the municipality that is transferred to the University of Alaska under
24 AS 14.40.365.

25 * Sec. 13. AS 37.13.010(a) is amended to read:

26 (a) Under art. IX, sec. 15, of the state constitution, there is established as a
27 separate fund the Alaska permanent fund. The Alaska permanent fund consists of

28 (1) 25 percent of all mineral lease rentals, royalties, royalty sale
29 proceeds, net profit shares under AS 38.05.180(f) and (g), 25 percent of all mineral
30 lease rentals, royalties, royalty sale proceeds, net profit shares derived from lands
31 conveyed to the University of Alaska under AS 14.40.365 and 25 percent of all

1 bonuses derived by the University of Alaska from mineral leases on these lands,
2 and 25 percent of [AND] federal mineral revenue sharing payments received by the
3 state from mineral leases issued on or before December 1, 1979, and 25 percent of all
4 bonuses received by the state from mineral leases issued on or before February 15,
5 1980;

6 (2) 50 percent of all mineral lease rentals, royalties, royalty sale
7 proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue
8 sharing payments received by the state from mineral leases issued after December 1,
9 1979, and 50 percent of all bonuses received by the state from mineral leases issued
10 after February 15, 1980; and

11 (3) any other money appropriated to or otherwise allocated by law or
12 former law to the Alaska permanent fund.

13 * Sec. 14. AS 14.40.368 is repealed.

14 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 RATIFICATION OF PRIOR CONVEYANCES. All of those interests in lands that
17 were conveyed to the university under ch. 136, SLA 2000 and ch. 8, FSSLA 2005, before the
18 Alaska Supreme Court's ruling in Southeast Alaska Conservation Council v. State, 202 P.3d
19 1162 (Alaska 2009) are ratified and are deemed to have been conveyed under the authority of
20 this Act.

21 * Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
24 of this Act to any person or circumstance is held invalid, the remainder of this Act and the
25 application to other persons or circumstances are not affected.

26 * Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

CS FOR HOUSE BILL NO. 295(EDC)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE EDUCATION COMMITTEE

Offered: 2/8/10

Referred: Community and Regional Affairs, Resources, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

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

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 FINDINGS AND PURPOSE. The legislature finds that

10 (1) an academically strong state university system is a cornerstone to the long-
11 term development of a stable population and to a healthy, diverse economy in the state;

12 (2) article VII, sec. 2 of the Constitution of the State of Alaska provides that
13 the University of Alaska shall have title to all real property conveyed to it and that the

1 legislature shall prescribe how university property shall be administered according to law;

2 (3) article VIII, sec. 9 of the Constitution of the State of Alaska authorizes the
3 legislature to provide for the grant of state lands and interests in those lands;

4 (4) it is in the best interests of the state and the University of Alaska that the
5 university take ownership of a significant and substantial portfolio of land in order to further
6 the interests of public higher education and economic development in the state;

7 (5) renewable resources should be managed on a sustained yield basis, taking
8 into account the total land grant;

9 (6) transferring to the University of Alaska a significant and substantial
10 portfolio of land furthers the interests of public higher education by allowing campus
11 development and expansion, by facilitating academic research, and by fostering economic
12 development for the well-being of the University of Alaska and the state;

13 (7) the Alaska Supreme Court's ruling in Southeast Alaska Conservation
14 Council v. State, 202 P.3d 1162 (Alaska 2009) invalidated ch. 136, SLA 2000 and ch. 8,
15 FSSLA 2005 because depositing revenues from land conveyed to the University of Alaska in
16 the university endowment trust fund violated the dedicated funds section, art. XI, sec. 7, of the
17 Constitution of the State of Alaska; the Alaska Supreme Court also held that, with the
18 exception of the provision conveying the university research forest, the land conveyance
19 provisions of the legislation could not be severed from the provisions that dedicated the
20 revenue from the land to the university's endowment trust, and ordered that any land
21 conveyed to the University of Alaska under the legislation be reconveyed to the state;

22 (8) it is in the best interests of the state and the University of Alaska to

23 (A) address directly the Alaska Supreme Court's ruling and enact
24 curative legislation that conveys land to the University of Alaska without the
25 unconstitutional dedication of revenue from the conveyed land to the University of
26 Alaska's endowment trust; and

27 (B) authorize conveyance to the University of Alaska of the same land
28 identified in ch. 8, FSSLA 2005;

29 (9) the state and the University of Alaska have expended substantial effort and
30 money in connection with conveying lands to the university under ch. 136, SLA 2000 and ch.
31 8, FSSLA 2005 before the Alaska Supreme Court's ruling in Southeast Alaska Conservation

1 Council v. State, 202 P.3d 1162 (Alaska 2009), and it is in the best interests of the state and
 2 the University of Alaska to preserve that effort and money by ratifying the conveyances that
 3 had occurred before the Alaska Supreme Court ruling;

4 (10) through the amendment of AS 14.40.491 to explicitly define as university
 5 receipts the revenue received by the University of Alaska from lands conveyed to the
 6 university under AS 14.40.365, the legislature retains unfettered discretion to appropriate
 7 university receipts as it sees fit, without restrictions, on an annual basis; and that preserving
 8 the legislature's discretion to appropriate the receipts on an annual basis is in the best interests
 9 of the University of Alaska and the state.

10 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

12 **LEGISLATIVE INTENT.** It is the intent of the legislature

13 (1) to respond to the Alaska Supreme Court's ruling in Southeast Alaska
 14 Conservation Council v. State, 202 P.3d 1162 (Alaska 2009), by passing legislation that
 15 conveys land to the University of Alaska and provides for management of revenue from that
 16 land as university receipts over which the legislature retains unrestricted authority to
 17 appropriate as it sees fit;

18 (2) to ratify the conveyances that were executed under ch. 136, SLA 2000 and
 19 ch. 8, FSSLA 2005 before the Alaska Supreme Court's ruling so that the university retains
 20 clear title to that land;

21 (3) if any provision of this Act or the conveyance of any parcel of land or class
 22 of lands under this Act is found to be an unlawful dedication of funds in violation of art. IX,
 23 sec. 7 of the Constitution of the State of Alaska or otherwise unlawful, that the land
 24 conveyances to the University of Alaska under this Act continue to the fullest extent possible;

25 (4) that the University of Alaska receive clear title to the land identified in
 26 AS 14.40.365, even though proceeds from those lands are not deposited into the University of
 27 Alaska's endowment trust fund and are instead subject to appropriation by the legislature each
 28 year in its discretion, without prior limitation upon the legislature's use and appropriation of
 29 the funds; and

30 (5) to have a stable University of Alaska system that provides a wide range of
 31 land-related curricula and extracurricular activities, including those activities that enhance

1 civic partnerships through community-based land management; expansion of campuses and
 2 training sites; and land management for economic development and benefit to the University
 3 of Alaska and the state.

4 * **Sec. 3.** AS 14.40.170(a) is amended to read:

5 (a) The Board of Regents shall

6 (1) appoint the president of the university by a majority vote of the
 7 whole board, and the president may attend meetings of the board;

8 (2) fix the compensation of the president of the university, all heads of
 9 departments, professors, teachers, instructors, and other officers;

10 (3) confer such appropriate degrees as it may determine and prescribe;

11 (4) have the care, control, and management of

12 (A) all the real and personal property of the university; and

13 (B) land

14 (i) conveyed to the Board of Regents by the
 15 commissioner of natural resources in the settlement of the claim of the
 16 University of Alaska to land granted to the state in accordance with the
 17 Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance
 18 with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

19 (ii) conveyed to [THE BOARD OF REGENTS IN
 20 TRUST FOR] the University of Alaska by the commissioner of natural
 21 resources under AS 14.40.365;

22 (5) keep a correct and easily understood record of the minutes of every
 23 meeting and all acts done by it in pursuance of its duties;

24 (6) under procedures to be established by the commissioner of
 25 administration, and in accordance with existing procedures for other state agencies,
 26 have the care, control, and management of all money of the university and keep a
 27 complete record of all money received and disbursed;

28 (7) adopt reasonable rules for the prudent trust management and the
 29 long-term financial benefit to the university of the land of the university;

30 (8) provide public notice of sales, leases, exchanges, and transfers of
 31 the land of the university or of interests in land of the university;

1 (9) administer, manage, market, and promote a postsecondary
 2 education savings program, including the Alaska Higher Education Savings Trust
 3 under AS 14.40.802 and the Alaska advance college tuition savings fund under
 4 AS 14.40.803 - 14.40.817.

5 * **Sec 4.** AS 14.40.291(a) is amended to read:

6 (a) Notwithstanding any other provision of law, university-grant land, state
 7 replacement land that becomes university-grant land on conveyance to the university,
 8 land conveyed to [THE BOARD OF REGENTS IN TRUST FOR] the University of
 9 Alaska under AS 14.40.365, and any other land owned by the university is not and
 10 may not be treated as state public domain land. Land conveyed to [THE BOARD OF
 11 REGENTS IN TRUST FOR] the University of Alaska under AS 14.40.365 shall be
 12 managed in accordance with [AS NONTAXABLE TRUST LAND UNDER]
 13 AS 14.40.365 - 14.40.367 and policies of the Board of Regents.

14 * **Sec. 4.** AS 14.40.365 is repealed and reenacted to read:

15 **Sec. 14.40.365. University land grant.** (a) Except as provided in (b) of this
 16 section, no more than two years after the effective date of this Act, the commissioner
 17 of natural resources shall convey to the University of Alaska, by quitclaim deed, the
 18 state land identified for conveyance to the university and described in the document
 19 titled "University of Alaska Land Grant List 2005," dated January 12, 2005.

20 (b) As soon as practicable after June 30, 2055, the commissioner of natural
 21 resources shall convey to the University of Alaska, by quitclaim deed, the state land
 22 described as the "University Research Forest" and identified for conveyance to the
 23 university in the document titled "University of Alaska Land Grant List 2005," dated
 24 January 12, 2005.

25 (c) As soon as practicable after the receipt of patent from the United States,
 26 but not before the land is otherwise required to be conveyed under this section, the
 27 commissioner of natural resources shall convey to the University of Alaska, by
 28 quitclaim deed, federal land that has been selected for conveyance to the state under
 29 the Alaska Statehood Act but is subject to a federal mining claim, and that is identified
 30 in the document titled "University of Alaska Land Grant List 2005," dated January 12,
 31 2005, for conveyance to the university upon the state's acquisition of patent.

1 (d) Notwithstanding AS 38.05.125(a), and except as otherwise provided in this
 2 section, the transfer of ownership of land from the commissioner of natural resources
 3 to the University of Alaska under this section includes the interest of the state in the
 4 coal, ores, minerals, fissionable materials, geothermal resources, and fossils, oil, and
 5 gas that may be in or on the land.

6 (e) Land conveyed under this section to the University of Alaska is subject to
 7 any valid possessory interest or other valid existing right, including any lease, license,
 8 contract, prospecting site, claim, sale, permit, right-of-way, Native allotment, or
 9 easement held by another person, including a federal, state, or municipal agency, on
 10 the effective date of this section.

11 (f) Before conveying land under this section, the commissioner of natural
 12 resources shall reserve access under AS 38.05.127, but other provisions of AS 38.04
 13 and AS 38.05 do not apply to the commissioner's preparation for conveyance of land
 14 to the University of Alaska under this section. In addition to access under
 15 AS 38.05.127, the commissioner may reserve in the conveyance document existing
 16 offshore uses such as aquatic fish farm sites, anchorages for vessels, fish buying
 17 stations, trails, roads, and other access routes that provide public access to adjacent
 18 land and public waterways; however, an easement along tidewater reserved by the
 19 commissioner under AS 38.05.127 may not exceed 25 feet.

20 (g) In addition to rights or an interest held by a person under (e) of this
 21 section, land conveyed to the University of Alaska under this section

22 (1) is subject to

23 (A) sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat.
 24 339);

25 (B) AS 19.10.010;

26 (C) any easement, right-of-way, or other access under former
 27 43 U.S.C. 932 (sec. 8, Act of July 26, 1866, 14 Stat. 253);

28 (D) the provisions of any memorandum of agreement entered
 29 into between the University of Alaska and the commissioner of natural
 30 resources governing shared benefits or costs associated with land to be
 31 conveyed to the University of Alaska;

1 (E) any interest transferred to the state by quitclaim deed dated
 2 June 30, 1959, under authority of the Alaska Omnibus Act (P.L. 86-70, 73
 3 Stat. 141); and

4 (2) excludes the mineral estate on land that is subject to a valid state
 5 mining claim.

6 (h) As soon as practicable after the extinguishment, release, or expiration of a
 7 valid state mining claim located on land to be conveyed under this section, but not
 8 before the land is otherwise required to be conveyed under this section, the
 9 commissioner of natural resources shall convey the mineral estate excluded from
 10 conveyance under (g)(2) of this section.

11 (i) The responsibility for the management of land conveyed to the University
 12 of Alaska under this section vests with the Board of Regents for the University of
 13 Alaska on the date of recording that conveyance.

14 (j) Any income derived from land conveyed to the University of Alaska under
 15 this section accruing after the date of conveyance, including any income accruing from
 16 an existing lease, license, contract, prospecting site sale, permit, right-of-way,
 17 easement, or trespass claim shall be received by the University of Alaska and
 18 accounted for as university receipts.

19 (k) Notwithstanding any other provision of this section, within 10 years after
 20 final conveyance of land under this section, the Board of Regents may reconvey to the
 21 Department of Natural Resources land

22 (1) containing hazardous waste that was present on the land before
 23 conveyance under this section;

24 (2) on which is located a historic or archeological site that is subject to
 25 management under AS 41.35; or

26 (3) that the Board of Regents and the commissioner of natural
 27 resources jointly agree is in the best interests of the state and the university to
 28 reconvey.

29 (l) After the effective date of this section and before the conveyance of a
 30 parcel of land to the University of Alaska under this section, the commissioner of
 31 natural resources may not convey, without consent of the university, any irrevocable

1 interest in a parcel that is required to be conveyed to the University of Alaska under
2 this section.

3 (m) The commissioner of natural resources may make minor adjustments to
4 the maps or legal descriptions of the state land identified for conveyance to the
5 university and described in the document titled "University of Alaska Land Grant List
6 2005," dated January 12, 2005, to correct omissions.

7 (n) Notwithstanding (a) of this section, the state land identified in
8 the document titled "University of Alaska Land Grant List
9 2005, may not be conveyed to the U.

- 10 (1) Parcel Number CS..
- 11 (2) Parcel Number MF.1u
- 12 (3) Parcel Number CS.KI.1u
- 13 (4) Parcel Number HA.CH.10\
- 14 (5) Parcel Number KT.1004, Nea
- 15 (6) Parcel Number MA.KR.1001, k
- 16 (7) Parcel Number ST.1002, Pelican;
- 17 (8) Parcel Number PA.1001, Port Alexa, and
- 18 (9) Parcel Number ST.1002, Warm Springs Bay.

*add
amendment
here*

19 (o) Notwithstanding (a) of this section, the state land identified in this
20 subsection and described in the document titled "University of Alaska Land Grant List
21 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
22 under this section if the land is included in a borough formed before July 1, 2012, that
23 includes Petersburg. If a borough is not formed before July 1, 2012, land described in
24 this subsection shall be conveyed to the University of Alaska on July 1, 2012. If a
25 borough is formed before July 1, 2012, and the borough does not select land described
26 in this subsection before January 1, 2016, the land not selected by the borough shall be
27 conveyed to the University of Alaska on June 30, 2016. The following land is subject
28 to this subsection:

- 29 (1) Parcel Number SD.1001, Beecher Pass;
- 30 (2) Parcel Number SD.1001, Favor Peak;
- 31 (3) Parcel Number CS.TL.1001, Three Lake Road;

1 interest in a parcel that is required to be conveyed to the University of Alaska under
2 this section.

3 (m) The commissioner of natural resources may make minor adjustments to
4 the maps or legal descriptions of the state land identified for conveyance to the
5 university and described in the document titled "University of Alaska Land Grant List
6 2005," dated January 12, 2005, to correct omissions or errors.

7 (n) Notwithstanding (a) of this section, the following state land described in
8 the document titled "University of Alaska Land Grant List 2005," dated January 12,
9 2005, may not be conveyed to the University of Alaska under this section:

- 10 (1) Parcel Number CS.DI.1001, Duke Island;
- 11 (2) Parcel Number MF.1002, Idaho Inlet;
- 12 (3) Parcel Number CS.KI.1001, Kelp Island;
- 13 (4) Parcel Number HA.CH.1001, Haines-Chilkoot;
- 14 (5) Parcel Number KT.1004, Neets Creek;
- 15 (6) Parcel Number MA.KR.1001, Kodiak Rocket Range;
- 16 (7) Parcel Number ST.1002, Pelican;
- 17 (8) Parcel Number PA.1001, Port Alexander; and
- 18 (9) Parcel Number ST.1002, Warm Springs Bay.

19 (o) Notwithstanding (a) of this section, the state land identified in this
20 subsection and described in the document titled "University of Alaska Land Grant List
21 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
22 under this section if the land is included in a borough formed before July 1, 2012, that
23 includes Petersburg. If a borough is not formed before July 1, 2012, land described in
24 this subsection shall be conveyed to the University of Alaska on July 1, 2012. If a
25 borough is formed before July 1, 2012, and the borough does not select land described
26 in this subsection before January 1, 2016, the land not selected by the borough shall be
27 conveyed to the University of Alaska on June 30, 2016. The following land is subject
28 to this subsection:

- 29 (1) Parcel Number SD.1001, Beecher Pass;
- 30 (2) Parcel Number SD.1001, Favor Peak;
- 31 (3) Parcel Number CS.TL.1001, Three Lake Road;

1 (4) Parcel Number SD.1001, Read Island;

2 (5) Parcel Number SD.1001, Whitney Island.

3 (p) Notwithstanding (a) of this section, the state land identified in this
4 subsection and described in the document titled "University of Alaska Land Grant List
5 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
6 under this section if the land is selected by the City and Borough of Wrangell. If the
7 borough does not select land described in this subsection before January 1, 2013, the
8 land not selected by the borough shall be conveyed to the University of Alaska on
9 June 30, 2013. The following land is subject to this subsection:

10 (1) Parcel Number CS.EW.1001, Earl West Cove;

11 (2) Parcel Number CS.OV.1001, Olive Cove; and

12 (3) Parcel Number SD.1001, Thoms Place.

13 (q) Notwithstanding (a) of this section, the state land identified in this
14 subsection and described in the document titled "University of Alaska Land Grant List
15 2005," dated January 12, 2005, may not be conveyed to the University of Alaska
16 under this section if the land is included in a borough formed before July 1, 2012. If a
17 borough is not formed before July 1, 2012, the land described in this subsection shall
18 be conveyed to the University of Alaska on July 1, 2012. If a borough is formed
19 before July 1, 2012, and the borough does not select land described in this subsection
20 before January 1, 2016, the land not selected by the borough shall be conveyed to the
21 University of Alaska on June 30, 2016. The following land is subject to the provisions
22 of this subsection: Parcel C18.

23 * **Sec. 5.** AS 14.40.366 is repealed and reenacted to read:

24 **Sec. 14.40.366. Management requirements for university land.** (a) Before
25 the conveyance or the disposal of an interest in the land to a third party, land conveyed
26 to the University of Alaska under AS 14.40.365 shall be managed in a manner that, to
27 the extent practicable, permits reasonable activities of the public, including historic
28 recent public uses, that do not interfere with the use or management of the land by the
29 university.

30 (b) For land conveyed to the University of Alaska under AS 14.40.365, the
31 Board of Regents shall

1 (1) seek public comment on proposals for land development,
2 exchange, or sale; and

3 (2) adopt policies that require the preparation of land development
4 plans and land disposal plans.

5 (c) Before the Board of Regents of the University of Alaska offers a parcel of
6 land for sale under this section, the board shall offer first refusal to the closest
7 municipality.

8 (d) The Board of Regents shall adopt policies requiring public notice before
9 approval of land development plans and land disposal plans. The policies must require
10 that the notice be provided not less than 30 days before the proposed action and that
11 the notice be

12 (1) sent to local legislators, municipalities, and legislative information
13 offices in the vicinity of the action and at other locations as the university may
14 designate;

15 (2) published in newspapers of general circulation in the vicinity of the
16 proposed action at least once each week for two consecutive weeks; and

17 (3) published on state and university public notice Internet websites.

18 (e) In this section, "development, exchange, or sale" does not include the grant
19 of an easement or right-of-way or the development of a campus facility.

20 * **Sec. 6.** AS 14.40.367 is repealed and reenacted to read:

21 **Sec. 14.40.367. Confidential records.** Notwithstanding AS 40.25.100 -
22 40.25.295 (Alaska Public Records Act), on a determination that it is in the best interest
23 of the University of Alaska or on the request of the person who has provided the
24 information, the president of the university may keep the following confidential:

25 (1) the name of a person applying for the sale, lease, or other disposal
26 of university land or an interest in university land;

27 (2) before the issuance of a notice of intent to award a contract relating
28 to a sale, lease or disposal of university land or an interest in university land, the
29 names of the participants and the terms of their offers;

30 (3) all geological, well, geophysical, engineering, architectural, sales,
31 market, cost, appraisal, timber cruise, gross receipts, net receipts, or other financial

1 information relating to university land or an interest in university land and considered
2 for, offered for, or currently subject to disposal or a contract;

3 (4) cost data and financial information submitted by an applicant in
4 support of applications for bonds, leases, or other information in offerings and
5 ongoing operations relating to management of university land;

6 (5) applications for rights-of-way or easements across university land;
7 and

8 (6) requests for information about or applications by public agencies
9 for university land that is being considered for use for a public purpose.

10 * **Sec. 7.** AS 14.40 is amended by adding a new section to read:

11 **Sec. 14.40.369. Statute of limitations.** A person may not bring any judicial
12 action challenging AS 14.40.365 - 14.40.367 or any conveyance authorized under
13 AS 14.40.365 unless the action is commenced no later than one year after the effective
14 date of this Act.

15 * **Sec. 8.** AS 14.40.400(a) is amended to read:

16 (a) The Board of Regents shall establish a separate endowment trust fund in
17 which shall be held in trust in perpetuity all

18 (1) net income derived from the sale or lease of the land granted under
19 the Act of Congress approved January 21, 1929, as amended; and

20 (2) [NET INCOME DERIVED FROM THE SALE, LEASE, OR
21 MANAGEMENT OF THE LAND CONVEYED TO THE BOARD OF REGENTS
22 IN TRUST FOR THE UNIVERSITY OF ALASKA UNDER AS 14.40.365;
23 HOWEVER, THE AMOUNT DEPOSITED IN THE ENDOWMENT TRUST FUND
24 UNDER THIS PARAGRAPH RESULTING FROM MINERAL LEASE
25 ROYALTIES AND ROYALTY SALES PROCEEDS MAY NOT BE LESS THAN
26 25 PERCENT OF ALL SUCH MINERAL LEASE ROYALTIES AND ROYALTY
27 SALES PROCEEDS RECEIVED BY THE UNIVERSITY; AND

28 (3)] monetary gifts, bequests, or endowments made to the University
29 of Alaska for the purpose of the fund.

30 * **Sec. 9.** AS 14.40.491 is amended to read:

31 **Sec. 14.40.491. Definition of university receipts.** In AS 14.40.120 -

1 14.40.491, "university receipts" includes

- 2 (1) student fees, including tuition;
- 3 (2) receipts from university auxiliary services;
- 4 (3) recovery of indirect costs of university activities;
- 5 (4) receipts from sales and rentals of university property;
- 6 (5) federal receipts;
- 7 (6) gifts, grants, and contracts;
- 8 (7) receipts from sales, rentals, and the provision of services of
- 9 educational activities; [AND]
- 10 (8) receipts attributable to amounts distributed from university
- 11 endowments established and managed under AS 14.40.280 and from the endowment
- 12 trust fund established and managed under AS 14.40.400; and
- 13 (9) receipts from lands conveyed to the University of Alaska by the
- 14 commissioner of natural resources under AS 14.40.365.

15 * Sec. 10. AS 29.45.030(a) is amended to read:

16 (a) The following property is exempt from general taxation:

17 (1) municipal property, including property held by a public corporation

18 of a municipality, [OR] state property, property of the University of Alaska, or land

19 that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L.

20 84-830, 70 Stat. 709, except that

21 (A) a private leasehold, contract, or other interest in the

22 property is taxable to the extent of the interest;

23 (B) notwithstanding any other provision of law, property

24 acquired by an agency, corporation, or other entity of the state through

25 foreclosure or deed in lieu of foreclosure and retained as an investment of a

26 state entity is taxable; this subparagraph does not apply to federal land granted

27 to the University of Alaska under AS 14.40.380 or 14.40.390, [OR] to other

28 land granted to the university by the state to replace land that had been granted

29 under AS 14.40.380 or 14.40.390, or to land conveyed by the state to the

30 university under AS 14.40.365;

31 (C) an ownership interest of a municipality in real property

1 located outside the municipality acquired after December 31, 1990, is taxable
 2 by another municipality; however, a borough may not tax an interest in real
 3 property located in the borough and owned by a city in that borough;

4 (2) household furniture and personal effects of members of a
 5 household;

6 (3) property used exclusively for nonprofit religious, charitable,
 7 cemetery, hospital, or educational purposes;

8 (4) property of a nonbusiness organization composed entirely of
 9 persons with 90 days or more of active service in the armed forces of the United States
 10 whose conditions of service and separation were other than dishonorable, or the
 11 property of an auxiliary of that organization;

12 (5) money on deposit;

13 (6) the real property of certain residents of the state to the extent and
 14 subject to the conditions provided in (e) of this section;

15 (7) real property or an interest in real property that is exempt from
 16 taxation under 43 U.S.C. 1620(d), as amended;

17 (8) property of a political subdivision, agency, corporation, or other
 18 entity of the United States to the extent required by federal law; except that a private
 19 leasehold, contract, or other interest in the property is taxable to the extent of that
 20 interest unless the property is located on a military base or installation and the
 21 property interest is created under 10 U.S.C. 2871 - 2885 (Military Housing
 22 Privatization Initiative), provided that the leaseholder enters into an agreement to
 23 make a payment in lieu of taxes to the political subdivision that has taxing authority;

24 (9) natural resources in place including coal, ore bodies, mineral
 25 deposits, and other proven and unproven deposits of valuable materials laid down by
 26 natural processes, unharvested aquatic plants and animals, and timber.

27 * **Sec. 11.** AS 29.65.030(d) is repealed and reenacted to read:

28 (d) For the purpose of determining the general land grant entitlement under (a)
 29 of this section, the maximum total acreage of vacant, unappropriated, unreserved land
 30 within the boundaries of the municipality between the date of its incorporation and
 31 two years after that date shall be increased by the amount of land located within the

1 boundaries of the municipality that is transferred to the University of Alaska under
2 AS 14.40.365.

3 * **Sec. 12.** AS 37.13.010(a) is amended to read:

4 (a) Under art. IX, sec. 15, of the state constitution, there is established as a
5 separate fund the Alaska permanent fund. The Alaska permanent fund consists of

6 (1) 25 percent of all mineral lease rentals, royalties, royalty sale
7 proceeds, net profit shares under AS 38.05.180(f) and (g), 25 percent of all mineral
8 lease rentals, royalties, royalty sale proceeds, net profit shares derived from lands
9 conveyed to the University of Alaska under AS 14.40.365 and 25 percent of all
10 bonuses derived by the University of Alaska from mineral leases on these lands,
11 and 25 percent of [AND] federal mineral revenue sharing payments received by the
12 state from mineral leases issued on or before December 1, 1979, and 25 percent of all
13 bonuses received by the state from mineral leases issued on or before February 15,
14 1980;

15 (2) 50 percent of all mineral lease rentals, royalties, royalty sale
16 proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue
17 sharing payments received by the state from mineral leases issued after December 1,
18 1979, and 50 percent of all bonuses received by the state from mineral leases issued
19 after February 15, 1980; and

20 (3) any other money appropriated to or otherwise allocated by law or
21 former law to the Alaska permanent fund.

22 * **Sec. 13.** AS 14.40.368 is repealed.

23 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 **RATIFICATION OF PRIOR CONVEYANCES.** All of those interests in lands that
26 were conveyed to the university under ch. 136, SLA 2000 and ch. 8, FSSLA 2005, before the
27 Alaska Supreme Court's ruling in Southeast Alaska Conservation Council v. State, 202 P.3d
28 1162 (Alaska 2009) are ratified and are deemed to have been conveyed under the authority of
29 this Act.

30 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application
2 of this Act to any person or circumstance is held invalid, the remainder of this Act and the
3 application to other persons or circumstances are not affected.

4 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

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February 8, 2010

Sectional Analysis

House Bill 295 – “An Act relating to the grant of certain state land to the University of Alaska; relating to the duties of the Board of Regents; relating to deposits made to the Alaska permanent fund received from certain lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior conveyances of land to the University of Alaska; making conforming amendments; and providing for an effective date.”

CSHB 295 - This analysis has been updated to include CSHB 295, passed out of the House Education Committee.

Section 5 (p) was amended to reflect a deferred conveyance date to January 1, 2013 rather than December 1, 2011.

Section 5 (q) was amended to delete parcel PA 1002, Mite Cove and substitute “parcel C-18”, within the Pelican area. Please see the note below within this section for further explanation of the Committee’s intent.

Section 1 – Findings and Purpose – Explains why legislation is necessary. Paragraphs (7) – (10) specifically address issues raised by Alaska Supreme Court regarding previous legislation.

Section 2 – Legislative Intent – Clarifies the intent of the Legislature to:

- respond to the Alaska Supreme Court decision in *S.E. Alaska Conserv’n Council v. State*, 202 P.3d 1162 (2009).
- convey state land to the University even though revenue from the land will be deposited in the general fund and be subject to annual appropriation by the Legislature.
- ratify conveyances that occurred under authority of SB 7 and HB 130.
- that the land should proceed even if any other provision in the bill is found to violate the dedicated funds clause of the Alaska Constitution.

Section 3 – Amends AS 14.40.170(a) by deleting the phrase “THE BOARD OF REGENTS IN TRUST FOR” before “the University” specifying the land conveyed under this legislation cannot be considered trust land managed by the Board of Regents.

Section 4 – Amends AS 14.40.291(a) similar to Section 3.

Section 5 – Creates a new AS 14.40.365 to replace the statute the Supreme Court found to be unconstitutional in its ruling in *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009). Subsectional analysis of new AS 14.40.365 follows:

- (a) Provides that DNR will convey land to University of Alaska by quitclaim deed

survey requirements. The two-year period should not be difficult for DNR to meet because most of the work to issue the deeds was already completed after the 2005 legislation.

- (b) Defers conveyance of the University Research Forest in Tanana Valley State Forest until 2055 (50 years from passage of 2005 legislation). This deferral was requested by the University as it allows the continued use of this area as Research Forest by University while at the same time allowing continued small timber sales and forestry management activities by DNR Division of Forestry.
- (c) Allows that when federal mining claims that currently exist as inholdings to parcels conveyed by the state to the University are terminated and the land subsequently conveyed to the state (DNR), that DNR will in turn convey this land to the University.
- (d) Ensures that the mineral estate is also conveyed to the University. This is an exception to AS 38.05.125 which requires, for most conveyances, DNR retain the mineral rights in state ownership due to provisions in Section 6(i) in the Alaska Statehood Act. Since the University is a state entity, transfer of mineral estate to the University does not violate the 6(i) provision.
- (e) Requires that conveyances to the University recognize and protect all valid existing rights.
- (f) Requires that DNR reserve access to and along navigable and public waters as required in AS 38.05.127, but limits the width of these easements on parcels along tidewater to a maximum of 25 feet (a provision specifically inserted by the legislature in the 2005 bill). These easements by regulation would otherwise have a 50-foot minimum width. This subsection also specifies that other provisions of AS 38.04 and AS 38.05 do not apply to these conveyances to the University.
- (g) Sets out additional limitations or requirements regarding the land conveyed to the University, including Section 6(i) of the statehood act that prohibits the state's alienation of mineral estate; makes conveyance subject to RS 2477 and Omnibus Act rights of way; and excludes from the conveyance to the University any valid existing state mining claims.
- (h) Requires that upon the termination of a state mining claim located within a parcel conveyed to the University under this bill, DNR will transfer that land to the University
- (i) Establishes the date of the recording of a parcel as the time when the University takes over management responsibility for land transferred under this act.
- (j) Establishes that upon conveyance to the University, all revenue and receipts accrue to the University as University receipts;
- (k) Allows the University to return land to DNR up to ten years after conveyance if it contains hazardous waste; is located on a historic or archeological site; or the University and DNR agree to the re-conveyance.
- (l) Requires University concurrence with any DNR conveyance of an irrevocable interest in a parcel to be conveyed to the University.
- (m) Allows the Commissioner of DNR to make minor boundary adjustments to correct omissions and errors.
- (n) Removes nine (9) parcels from the land list originally agreed to by DNR and the University. These 9 parcels were included in the original land list submitted to the legislature in 2005. They were removed by the legislature during committee review of the bill based upon public and community concerns.
- (o) Defers conveyance of five parcels located within the potential boundaries of a Petersburg Borough so that if a Borough forms before July 1, 2012 (two years), these parcels could be selected by a future Borough as part of its municipal entitlement under AS 29.65. If a borough does not form or the land is not

provision was inserted in the 2005 legislation to specifically address this concern raised by the Cities of Wrangell and Petersburg during the 2005 legislative hearings.

- (p) Defers conveyance of three parcels located within the City and Borough of Wrangell pending possible selection by the new borough under its municipal entitlement (AS 29.65). Provides the Borough until January 1, 2013 to select the land. A provision to defer these selections was inserted in the 2005 legislation to specifically address potential borough formation, a concern raised by the cities of Wrangell and Petersburg during the 2005 legislative hearings. Wrangell formed a borough after the 2005 legislation, but has not yet filed its land selections with DNR.
- (q) Defers conveyance of one parcel located within the potential boundary of a Northern Chichagof Island Borough so that if a Borough forms before July 1, 2012 (two years), this parcel could be selected by a future Borough as part of its municipal entitlement under AS 29.65. If a borough does not form or the land is not selected by a future Borough, the land will be conveyed to the University. This provision was inserted in the 2005 legislation to specifically address this concern raised during the 2005 legislative hearings. **NOTE:** this provision was amended in House Education to delete the reference to parcel PA 1002, Mite Cove and substitute "Parcel C-18". The intent of the amendment was to delete parcel MF 1001, Mite Cove from the land list and insert that portion of a parcel previously deleted, parcel ST 1002, Pelican, back into the list. The parcel to be added back is that portion of Parcel 1002 identified in the DNR Northern southeast area Plan as Unit C-18. DNR is working with the sponsor of the amendment to draft a revised amendment to correctly capture the intent of the House Education Committee.

Section 6 – Repeals and reenacts AS 14.40.366 as passed in 2005. Sets forth management requirements for university land, including preservation of historic recent public uses, public notice and comment opportunities for land development or disposal plans, and right of first refusal to closest municipality.

Section 7 – Repeals and reenacts AS 14.40.367 as passed in 2005. Exempts certain proprietary and business sensitive information related to university land disposals from the Alaska Public Records Act.

Section 8 – Establishes a one-year statute of limitations for parties wishing to bring a lawsuit regarding this legislation.

Section 9 – Requires that revenue generated from the conveyed land be handled as University receipts subject to annual appropriation by the Legislature. This section deletes the provision in HB 130 that required revenue from the conveyed land be deposited in the University Endowment Trust, thereby correcting the dedicated funds violation found by the Alaska Supreme Court in *S.E. Alaska Conserv'n Council v. State*, 202 P.3d 1162 (2009).

Section 10 – Defines University receipts to include land transferred under this new legislation.

Section 11 – Specifies that University land conveyed under this bill is exempt from general taxation.

Section 12 – Ensures that a municipal entitlement of a future city or borough is not reduced by the conveyance of land to the University under this legislation.

Section 13 - Requires that 25% of mineral revenue from University lands granted under this legislation be deposited into the Permanent Fund.

Section 14 - Restores the repeal of AS 14.40.368 regarding encumbrances and trespasses on land to be conveyed. This statute was enacted by SB 7 and repealed by HB 130. This section confirms that AS 14.40.368 is to remain repealed.

Section 15 - Ratifies conveyances made to the University under the 2005 legislation, so that DNR does not have to re-issue deeds.

Section 16 - Adds a severability clause.

Section 17 - Establishes an immediate effective date.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 295
 (H) Publish Date: 1/19/10

Identifier (file name): 0829-REV-APFC-1-6-10 Dept. Affected: Revenue
 Title: University of Alaska Land Transfer RDU: Alaska Permanent Fund Corporation
 Sponsor: Rules Component: APFC Operations
 Requester: Request of Governor Component Number: 109

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

The APFC anticipates no impact on revenues or expenditures as a result of this legislation.

Prepared by: Ginger Blaisdell for Laura Achee Phone 465-2312
 Division: Alaska Permanent Fund Corporation Date/Time 12/18/09; 2:00pm
 Approved by: Ginger Blaisdell, Director Date 1/6/10; 1:33pm
Administrative Services Division

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 295
(H) Publish Date: 1/19/10

Identifier (file name): 0829-DNR-MLW-12-21-2009 Dept. Affected: Natural Resources
Title Grant of State Land to the University of Alaska RDU Resource Development
Component Title Acquisition and Defense
Sponsor Rules Committee
Requester Governor Component Number 2459

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ()	***	***	*** Indeterminate (see analysis) ***		***	***	***

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

This bill requires DNR to convey title to 194,379 acres of specifically identified parcels of state land to the University of Alaska within two years of the effective date of the legislation. To satisfy the land conveyance proposed under this legislation, DNR will need to complete the conveyance process for these parcels, including a land title search, identify and reserve easements, identify and reserve navigable waters, and resolve any title conflicts. This will require some DMLW staff time to complete this research, finish the preparation of legal descriptions, prepare conveyance documents, and update the state's computerized records system. Because this effort was substantially completed by the department under the provisions of chapter 8, FSSLA 2005 prior to the State Supreme Court's invalidation of that statute, only a small amount of work remains to finalize the conveyances required under this bill.

Prepared by: Dick Mylius
Division: Director, Mining Land and Water
Approved by: Tom Irwin, Commissioner
Natural Resources

Phone 907-269-8625
Date/Time December 21, 2009
Date December 21, 2009

FISCAL NOTE #2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 295

ANALYSIS CONTINUATION

(Analysis cont.)

Accordingly, DNR does not anticipate any additional funds or positions will be required, and the department can implement the intent of this proposed legislation using existing staff and resources.

This bill is intended to expedite the conveyance of state lands, including the mineral estate, to the University of Alaska by conveying to the Board of Regents by quitclaim deed to those state lands identified for conveyance to the University in a document entitled "University of Alaska Land Grant List 2005" dated January 12, 2005. This "Land Grant List" includes lands that make up part of the Nenana oil and gas basin.

***Based on the subsurface information currently available, the Nenana basin is thought to be gas-prone. DNR believes that the gas potential of this basin ranges from moderate to good. The basin is also in close proximity to markets in Fairbanks. Andex Resources currently has an oil and gas exploration license for part of the Nenana Basin. It is impossible without further exploration to predict the exact fiscal impacts. However, the conveyance of part of the Nenana oil and gas basin to the University of Alaska could result in a significant new source of revenue and /or energy for the University with a corresponding decrease in general and permanent fund revenues.

There is a similar but lesser impact from transferring the surface and subsurface from other lands that DNR would otherwise sell or lease. That is, the Department anticipates an unspecified decrease in future revenues from the loss of these lands.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 295
(H) Publish Date: 1/19/10

Identifier (file name): 082-UA-SWS-12-18-09 Dept. Affected: University of Alaska
Title: An Act relating to the grant of certain land to the University of RDU: University of Alaska
Alaska Component: Sysbra
Sponsor: Governor Component Number: 730
Requester: _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual	500.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	500.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
1048 University Receipts	500.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0
TOTAL	500.0	250.0	250.0	250.0	250.0	250.0	250.0	250.0

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

In the short term (6 years) this bill would provide very little operating revenue, due to the fact that the funding resulting from this bill is deposited into UA's Land Grant Trust Fund (LGTF, an endowment that has a payout policy similar to the POMV principles i.e., 5% of the prior five year endowment average), however, in the long term, after substantial additions to the LGTF endowment UA can see modest operating revenue i.e., in approximately 20 years UA anticipates annual investment earnings on new land sales to reach 1% of state general fund support or \$2.6M. UA Land Management will add minimal staff to accomplish management of the new lands as this land transfer would roughly replace land inventory available for sale. Land Management operating costs are already considered in the net revenue projections.

Prepared by: Michelle Rizk, Associate Vice President Phone 450-8187
Division: University of Alaska Date/Time 12/18/09 4:40 PM
Approved by: Michelle Rizk, Associate Vice President Date _____
Statewide Budget

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Governor Sean Parnell
STATE OF ALASKA

January 15, 2010

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear President Stevens,

Under the authority of Art. III, Sec. 18, of the Alaska Constitution, I am transmitting a bill relating to: the grant of certain State lands to the University of Alaska; the duties of the Board of Regents; the deposits made to the Alaska Permanent Fund received from lands conveyed to the University of Alaska; ratifying and reauthorizing certain prior conveyances of land to the University of Alaska; and making conforming amendments.

This bill will fulfill a promise made at the turn of the 20th century, when Congress promised 350,000 acres of land to the former Alaska Territorial College and School of Mines. However, since Statehood in 1959, most of this promised land has never materialized. Today, at 140,000 acres, the University of Alaska has one of the smallest land grants in the United States. Even Rhode Island's university land grant is larger. The intent of the land grants is to provide the university with a portfolio of land that will enhance its financial position and further its educational mission. Land grant colleges and universities are common throughout the United States.

Final resolution to this much overdue commitment is something I have and continue to strongly support. During my tenure in the Legislature I advocated for, and the Legislature passed, several pieces of University Land Grant legislation. By introducing this legislation I've committed to the purpose of the legislation passed in 2005 and removed constitutional issues created by that legislation.

The bill will convey approximately 199,838 acres of State land to the University of Alaska. The Legislature will specify revenue generated by the University of Alaska's management of the land be managed as university receipts, subject to appropriation each year by the Legislature. This bill ratifies and reauthorizes the land conveyances in legislation enacted in 2000 (ch. 136, SLA 2000) and 2005 (ch. 8, FSSLA 2005). These statutes were found by the Alaska Supreme Court, in *Southeast Alaska Conservation Council v. State*, 202 P.3d 1162 (Alaska 2009) to violate Art. IX, Sec. 7 (the dedicated funds section) of the Constitution of the State of Alaska, because the statutes specified that revenue generated from the University of Alaska's management of the land was to be deposited in the University of Alaska's endowment trust fund.

The Alaska Supreme Court found that the dedication provisions of the statutes could not be severed from the land conveyance provisions, rendering the entirety of the legislation unconstitutional, except for the provisions pertaining to the university research forest. The bill explicitly states the intent to convey the land to the University of Alaska, notwithstanding that revenue generated from the land may not be dedicated to

The Honorable Mike Chenault
January 15, 2010
Page 2

the University of Alaska's endowment trust. The bill addresses the constitutional infirmity by specifying that revenue generated from the University of Alaska's management of the land is to be managed as university receipts, subject to appropriation each year by the Legislature.

The land to be conveyed in this bill to the University of Alaska will be the land originally designated in the final 2005 legislation (ch. 8, FSSLA 2005), with the exception of two parcels that were conveyed under separate statutory authority and the university research forest. The bill refers to the land identified in the document titled, "University of Alaska Land Grant List 2005," dated January 12, 2005. This land list was arrived at after more than a year of intense work by the Department of Natural Resources (department) and the University of Alaska to identify land that may be conveyed to the University of Alaska without unreasonably conflicting with programs associated with, and uses of, State land managed by the department.

The land list in the bill reflects changes made by the Legislature during the 2005 session, including the Legislature's decision to drop certain parcels that were on the original list provided in January 2005. The bill will also include language added by the Legislature to protect land for possible municipal entitlement selections by the City and Borough of Wrangell and possible borough in the Petersburg area. Before the Alaska Supreme Court declared the prior land conveyance statutes unconstitutional (ch. 136, SLA 2000 and ch. 8, FSSLA 2005), the department had completed conveyance of 31 of the 52 available parcels identified in the land list. The bill ratifies and reauthorizes these conveyances, as well as provides authority for conveyance of the remaining 21 parcels.

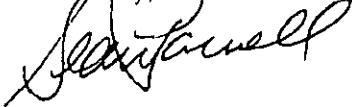
The bill also includes requirements for management of university land, such as public notice and comment opportunities on proposals for land development, exchange, or sale. Additionally, the bill exempts certain sensitive business and economic information regarding sale, lease, or development of university land from the public records production requirements of AS 40.25.100 - 40.25.295 (Alaska Public Records Act). These provisions reflect the 2005 legislation.

The prior land conveyance statutes included a provision for establishment of a university research forest. This provision is not included in this bill since the Alaska Supreme Court found that the provision in the prior legislation could be severed from the unconstitutional dedication provisions, and it was therefore upheld as constitutional.

The bill also contains a provision authorizing the deposit to the Alaska Permanent Fund of 25 percent of receipts from certain lands conveyed to the University of Alaska. A copy of the "University of Alaska Land Grant List 2005" has been provided to the Legislature and is available upon request from the Department of Natural Resources.

I urge your prompt and favorable action on this measure, which will complete the State's efforts to provide a beneficial educational and income-producing land base to the University of Alaska, while complying with the dedicated funds section of the Constitution of the State of Alaska.

Sincerely,



Sean Parnell
Governor

Enclosure

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

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February 8, 2010

Representative Bob Herron, Co-Chair
House Community & Regional Affairs
State Capitol, Rm 411
Juneau, Alaska 99801

Representative Cathy Munoz, Co-Chair
House Community & Regional Affairs
State Capitol, Rm 409
Juneau, Alaska 99801

Re: House Bill 295 - University Land Grant

Dear Representatives Herron and Munoz:

Please accept this request for your consideration to schedule HB 295 before the House Community & Regional Affairs at your earliest convenience.

This bill would convey approximately 199,838 acres of state land to the University of Alaska, and specify that revenue generated by the University of Alaska's management of the land be subject to appropriation each year by the legislature.

Legislation passed in 2000 and 2005 made certain land grants to the University of Alaska and specified that the revenue generated from those lands would be deposited into the University endowment trust fund. In March 2009 the Alaska Supreme Court found these statutes to violate the dedicated funds section of the Alaska Constitution, art. IX, sec. 7.

This bill seeks to remedy those issues identified by the Court by specifying that the revenue generated from the land is to be accounted for as university receipts and therefore subject to appropriation each year by the legislature. It also ratifies and reauthorizes the land conveyances authorized in the previously enacted legislation. The land to be conveyed under this bill is the same as what was to be conveyed to the University of Alaska in the final 2005 legislation (ch. 8, FSSLA 2005), with the exception of two parcels that were conveyed under separate statutory authority and the university research forest.

The bill was amended in House Education Committee by removing one parcel at Mite Cove on Lisianski Inlet and by adding a portion of a parcel previously deleted, parcel ST 1002, Pelican, back into the list. The parcel to be added back is that portion of Parcel

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

1002 identified in the DNR Northern Southeast Area Plan as Unit C-18. The amendment that was adopted by House Education Committee failed to do what they intended so DNR is working with the Sponsor of the amendment to draft a revised amendment for consideration by House CRA to correctly capture the intent of the House Education Committee.

If you have any questions regarding the bill, feel free to contact Samantha Carroll, Department of Natural Resources Special Assistant at 269-8434, or Dick Mylius, Director of Division of Mining, Land, and Water at 269-8625.

Sincerely,



Thomas E. Irwin
Commissioner

Parcel Name	Parcel Number -- 2010 Land Use List	DNR Land Use Plan	Land Designation in Plan	Notes
Earl West Cove ¹	PT.1004	CSEAP	General Use	Management intent indicates parcel to be used for multiple uses, including settlement and future timber sales.
Mite Cove ²	MF.1001	NSEAP	Dispersed Recreation	Management intent indicates that the parcel is to be used for public purposes; not appropriate for settlement.
Moser Bay	CS.MB.1001	CSEAP	Settlement, General Use	Management intent indicates western part of parcel to be managed for settlement; remainder is General use. Note: anadromous stream is Habitat.
Olive Cove ³	CS.OV.1001	CSEAP	General Use, Dispersed Rec.	Adjoins state subdivision. Management intent indicates that portions of parcel may be appropriate for settlement.
Sumdum	SD.1001	NSEAP	Dispersed Recreation	Management intent indicates that only development related to recreation uses would be appropriate.
Tenakee Springs	ST.1003	NSEAP	Public Facilities, Settlement/ Commercial	Management intent indicates that development appropriate near harbor and, in some inland locations, for commercial, industrial, and road right-of-way purposes. Areas not used for this purpose should remain undeveloped.
Thoms Place ⁴	SD.1001	NSEAP	Settlement, General Use	Management intent indicates that settlement should occur along coast. Timber harvest in General Use areas not appropriate except as related to land development. Adjoins state subdivision to south.

CSEAP – Central Southeast Area Plan

NSEAP – Northern Southeast Area Plan

¹ Affected by legislative provision allowing land to be conveyed to a borough under certain conditions.

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.

Identification of Parcels – 2005 Land List

Parcels were identified according to the needs of the University and the restrictions of state area plans. DNR also established some sideboards of properties that would not be considered, such as producing oil and gas properties (including the entire North Slope), areas where DNR had already started work on land sales, timber parcels critical to the DNR Forestry sales program and sustained yield calculations, parcels selected by municipalities, etc. (this is not a complete list). Three types of properties were identified as needed by the University.⁵

Investment Properties (73,865 acres). DNR and the University initially reviewed all available land throughout the state and all applicable area plans. Generally, both parties agreed that it would be preferable, except in cases related to educational development and research and oil and gas utilization, to exclude parcels that were designated in area plans as generally inappropriate for development or could not be conveyed to individuals or municipalities based on plan or statutory restrictions. Designations that included Water Resources, Habitat, and Forestry were avoided; these designations cannot, for example, be conveyed to municipalities under the Municipal Entitlement Act. Designations that provided for development of some type or are acceptable for municipal conveyance were used as the basis for initial selection. Our review therefore focused on state land designated Agriculture, Settlement, General Use (a multiple use designation) and, to a lesser extent, Public Recreation where some type of recreation development was envisaged. The management intent associated with these parcels (which sometimes constrains use and development) as well as specific parcel knowledge were then used to reduce the inventory of parcels to that contained in the 2005 Land List. In all cases DNR required that the entirety of state land in an area of selection be included; this avoided the selection of just the best areas (high-grading), leaving the state with areas of limited worth.

Educational Properties (35,973 acres). Parcels that augmented the holdings of current educational facilities (Sitka, Juneau, and Fairbanks) were included. Also included were parcels important to water and water quality research and forest research and management. The former included large areas near Fairbanks as well as portions of the Tanana Valley State Forest. The latter was conveyed as a University Research Forest under the previous legislation.

Oil and Gas Properties (90,000 acres). A large area near Nenana was included on the basis that this area has oil and gas potential and may be able to generate revenue.

⁵ The acreage estimates given reflect the proposals of the 2005 Land List. Some parcels have been conveyed to the University. Especially significant is the University Research Forest (51,820 acres).

FROM LEG LEGAL
Don Bullock

Issues with CSHB 295(EDC)

1. (STYLE) Generally needs edits to conform with the drafting manual and the style of the Alaska Statutes. (Also, some sections were repealed and reenacted when there were only limited changes).
2. (LEGAL, SUBSTANTIVE) University land is state land. The bill does not provide the law for the administration and disposition of the land conveyed to the university. Administration and disposition may not be done under policies of the Board of Regents, only under laws passed by the legislature. See, e.g. AS 38.05, the Alaska Land Act.
3. (LEGAL SUBSTANTIVE; POLICY AS TO PERCENTAGE) The bill incorrectly describes proceeds from the land conveyed to the University that must be deposited into the Permanent Fund (Amendment to AS 37.13.010(a) in sec. 12, CSHB 295(EDC)).
4. (POLICY) Bottom line University can have title, but cannot manage the land except under laws passed by the legislature; University cannot have any money generated by the land without appropriation by the legislature. Begs the question, except for land that may be used for purposes related to the function of the university, why transfer the land? The same thing could be accomplished by keeping the land under the administration of DNR, identify the parcels, and provide that the income from the identified parcels may be appropriated to the University.

Southeast AK Conservation Council v. State, 202 P.3d 1162, 1171 (Alaska 2009).

Thus, even when the University has title to land, "only the legislature can make laws effecting the disposal of land, not the Board of Regents."

Our case law establishes that University lands are state lands. *Article VII, section 2* establishes the University, declares it a "body corporate," provides that the University "shall have title to all real and personal property now or hereafter set aside for or conveyed to it," and states that "[i]ts property shall be administered and disposed of according to law." We considered the meaning of *article VII, section 2* in *State v. University of Alaska*. [624 P.2d 807, 814] There, we held that the state could take land that Congress had granted to the University to be held in trust for it under the federal 1929 act, but that the state had to compensate the University with monetary damages or equivalently valuable land. Our opinion emphasized *article VII, section 2's* command that "property shall be administered and disposed of according to law," and noted that "'according to law' refer[s] to the legislature's power to make laws." Thus, even when the University has title to land, "only the legislature can make laws effecting the disposal of land, not the Board of Regents." We further observed that "[t]he natural resources article of the Alaska Constitution grants extensive powers to the legislature to control lands," which makes "clear that [the University lands received under the 1929 act] 'belong' to the state." The conclusion we reached in *State v. University of Alaska*, that University land is state land, applies even more readily to the present case because the University land involved here is not shielded by a federal trust obligation. Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion.

Constitutional provisions referred to in *Southeast AK Conservation Council v. State*, 202 P.3d 1162, 1171 (Alaska 2009):

Article VII. HEALTH, EDUCATION AND WELFARE

SECTION 2. State University. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. *Its property shall be administered and disposed of according to law.* [Emphasis added.]

Article VIII. NATURAL RESOURCES

SECTION 2. General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

What law applies to the administration and disposal of land conveyed to the university?

Excerpts from *Southeast AK Conservation Council v. State*, 202 P.3d 1162, 1171 (Alaska 2009), quoted above:

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

Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion.

"Statutory language treating University lands differently from other state land does not overcome this constitutionally based conclusion."

**Chapter 38.04. POLICY FOR USE AND CLASSIFICATION OF STATE LAND
SURFACE**

Sec. 38.04.005. Policy.

...

(f) Land owned by the Board of Regents of the University of Alaska is not subject to the provisions of this chapter.

Chapter 38.05. ALASKA LAND ACT

Sec. 38.05.030. Exceptions.

...

(f) Land owned by the Board of Regents of the University of Alaska is not subject to this chapter.

....

Additional problem with the above two excerpts: the Board of Regents does not own land. The board has "care, control, and management of land." CSHB 295(ED

Sec. 14.40.170. Duties and powers of Board of Regents. (a) The Board of Regents shall

...

- (4) have the care, control, and management of
 - (A) all the real and personal property of the university; and
 - (B) land

(i) conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

(ii) conveyed to the Board of Regents in trust for the University of Alaska by the commissioner of natural resources under AS 14.40.365;

....

What law would apply for the oil and gas leasing on land conveyed to the university under the bill? See AS 43.05.180 for oil and gas leasing on state land.

Permanent Fund Issue:

Sec. 12 of CSHB 295(EDC) only applies to leases entered into before dates in the past:

* **Sec. 12.** AS 37.13.010(a) is amended to read:

(a) Under art. IX, sec. 15, of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares derived from lands conveyed to the University of Alaska under AS 14.40.365 and 25 percent of all bonuses derived by the University of Alaska from mineral leases on these lands, and 25 percent of [AND] federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980; and

(3) any other money appropriated to or otherwise allocated by law or former law to the Alaska permanent fund.

The difference between AS 37.13.010(a)(1) and (2) is the time period when the applicable leases were issued. In AS 37.13.010(a)(1), the leases were issued on or before December 1, 1979 and February 15, 1980; in AS 37.13.010(a)(2), the relevant leases were issued after December 1, 1979 and February 15, 1980.

FIX: Either

(1) Treat university land as state land and make AS 37.13.010(a)(2) apply (50%)

or

(2) Add a new paragraph to AS 37.13.010(a) providing for payments and receipts from university leases with an appropriate percentage equal to or above the 25 percent required under Art. IX, sec. 15, Constitution of the State of Alaska.

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-3697

February 25, 2010

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

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

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

Dear Representative Munoz and Representative Herron:

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

¹ 202 P.3d 1162 (2009).

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

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

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

² 202 P.3d at 1172.

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

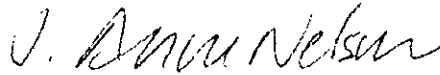
⁴ *See State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

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

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

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

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

Cc:

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

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

Board of Regents' Office
Phone: (907) 450-8010
Fax: (907) 450-8012
EMAIL: sybor@alaska.edu
www.alaska.edu/bor/

OFFICE OF THE GOVERNOR
MAILROOM



JUN 19 2009

10946
AK
JG

202 Butrovich Building
910 Yukon Drive
P.O. Box 755300
Fairbanks, AK 99775-5300

June 15, 2009

Dear Governor Palin and State of Alaska Legislators,

The united leadership of the University of Alaska system seeks your assistance to remedy the financial injury caused to the State of Alaska's University system by the recent Alaska Supreme Court March 13, 2009, decision, *Southeast Alaska Conservation Council v State of Alaska and University of Alaska*. In this decision, the Alaska Supreme Court voided the Alaska Legislature's action in passing the 2005 University Land Grant Bill. The court held unconstitutional the restriction that any proceeds of the land must be placed into the University Endowment Trust Fund, and surmised that the legislature would not have intended to grant the land without that restriction. The court, therefore, invalidated the whole act except for the part establishing a research forest.

A great state needs a great university system. A great university system must have adequate resources sufficient to meet its responsibilities. A more woeful history of a land-grant college could hardly be found. The University of Alaska is a land-grant college without the land.

The State of Alaska's University system has been waiting almost 100 years with no appreciable land. For an interesting and concise account of this baneful history we would direct you to "A Land Grant College Without the Land: A History of the University of Alaska's Federal Land Grant"; a brief 20 page report by Terrence M. Cole, which we can provide to you upon request.

The united leadership of the University of Alaska system is requesting that in your capacity as the governing leadership of the State of Alaska, as Governor and Legislators, that you correct the court's conjecture that the legislature would not want the University to have the land that the legislature granted to it. We respectfully request your support for advancing higher education in the State of Alaska by reconveying these lands to the University of Alaska at the earliest possible opportunity without the dedicated funds clause that the Alaska Supreme Court found to be offensive to our State Constitution.

We the undersigned, the leadership of the University of Alaska system, thank you for your support of higher education in the State of Alaska.

Cynthia Henry, Chair
Board of Regents

Mark Hamilton, President
University of Alaska

Terry Harvey

From: Rep. Cathy Munoz
Sent: Wednesday, February 03, 2010 3:10 PM
To: Terry Harvey
Subject: FW: HB 295 - Hello from Pelican!
Attachments: Comments on HB 295 to HEDU cmt.doc

Terry, please add to our file on the univ. lands bill. Cathy

From: Deb Spencer [mailto:dspencerak@yahoo.com]
Sent: Tuesday, February 02, 2010 11:04 PM
To: Rep. Bryce Edgmon; Rep. Cathy Munoz; Rep. Bob Buch
Subject: HB 295 - Hello from Pelican!

Hello All,

Attached please find some follow-up comments to my testimony at Friday's House Education Committee Hearing. I was the first (nervous) person to testify via teleconference.

I'm concerned that this bill will displace our fish-buying business, Shoreline, Inc. We've anchored in front of the Mite Cove parcel for 25 years and provide vital support for the troll fleet. Private ownership of the uplands would threaten our use of shorelines from the beach and a waterline from the uplands.

I'm also concerned that DNR's Northern Southeast Area Plan (NSEAP) is being disregarded by this bill. Please take a moment to read the attached letter. Louie Flora, staff to Rep. Wilson, has information and maps about a potential land substitution for the Mite Cove parcel.

Thank you for your consideration. Please contact me for any further information.

Regards,

Deb Spencer
Owner, Shoreline, Inc.
735-2495

Terry Harvey

From: Rep. Cathy Munoz
Sent: Thursday, February 18, 2010 4:26 PM
To: Terry Harvey
Subject: FW: sumdum parcelt in hb295 (sanford cove)

Terry, please keep his written testimony in the file on the bill. Cathy

From: Tim Lydon [mailto:t_lydon@yahoo.com]
Sent: Thursday, February 18, 2010 10:15 AM
To: Rep. Cathy Munoz; Rep. Bob Herron; Rep. John Harris; Rep. Wes Keller; Rep. Charisse Millett; Rep. Sharon Cissna; Rep. Berta Gardner
Cc: barbara lydon; hans baertle; bill bailey; shannon bailey; jeff behrens; dan blanchard; bryce brockaway; gary carlson; ken gerkin; joel hanson; sean janex; mike jones; jim kyle; dan liden; christine jeffrey smith; john swanson; ben swanson; spirit walker; geoff wilson; christine@northwestnavigation.com; info@sikumi.com; randy@bluewateradventures.ca; trips@dolphincharters.com; info@beyondak.com; dennis@yachtalaska.com; Jon Horn; kevin hood; alerij@hotmai.com; daven@seacc.org; mary.irvine@acsalaska.net
Subject: sumdum parcelt in hb295 (sanford cove)

Greetings Committee members. Thank you again for the opportunity to testify this morning about the Sumdum parcel included in the University Lands Bill, HB 295. As I tried to express in my testimony, the Sumdum parcel sits squarely in the middle of a federally designated wilderness that is important to many residents, business people and visitors to Southeast Alaska. It's also of great importance to salmon, bears, birds and other wildlife. Privatizing and developing the Sumdum parcel would have a deleterious effect on a wide array of users and resources.

Please include in today's testimony the statement below from the following 17 Southeast Alaska commercial tour businesses. These operators have taken the time and energy to put together this statement. They feel strongly about leaving the Sumdum parcel undeveloped. I hoped to present their statement in the course of my testimony today, but time did not allow for it.

I hope the committee recognizes the importance of this parcel to this wide array of people and businesses. Please delete the parcel from HB295. Thank you.

STATEMENT:

The undersigned seventeen commercial tour companies bring thousands of visitors to Southeast Alaska every year. Our businesses provide guided hunting and fishing, kayak expeditions, and week-long excursions aboard small and mid-size vessels. Our segment of Alaska's tourism industry provides vital and unique economic benefits to southeast Alaska, and many of us are local business people. We stand out among other segments of the tourism industry because many of us provision our excursions locally, and a high number of our clients dine and seek local accommodations before and after their trips. University of Alaska research shows businesses like ours pump millions of dollars into the Southeast economy annually.

Bringing clients to wild Alaskan landscapes is the backbone of our businesses, and it's the reason for our concern over the Sumdum parcel. The Sumdum parcel is in Sanford Cove, in the heart of the Tracy Arm-Fords

Terror and Chuck River Wilderness Areas. For each of us, the area is a highlight of the services we provide. Many of us use Sanford Cove as a safe and scenic anchorage. With bears, wolves, salmon and cultural ruins, it is a common location for walks ashore, fishing, hunting and camping. Not only for our commercial clients, but for many independent and local travelers, too.

Tracy Arm-Fords Terror Wilderness is especially unique because it currently contains no lodges, private cabins, or other developments. Some of us have operated in southeast Alaska for several decades, long enough to know that such undeveloped anchorages are increasingly rare.

Privatization of the Sumdum parcel would displace many of us from long-standing business activities. It would also displace many independent and local recreationists and mar an undeveloped landscape. But removing the Sanford Cove parcel from House Bill 130 would have only a minor impact on university funding, one that could be compensated by other means.

Thank you for your consideration, and please help us maintain current use of this important part of southeast Alaska.

Sincerely,

John Swanson, President, Southeast Alaska Wilderness Tours Association (SAWTA)

SAWTA represents the following ten southeast Alaska commercial tour companies:

Geoff Wilson Alaska Yacht Charters

Richard Friedman Alaskan Song

Christine Smith Northwest Navigation

John Swanson All Aboard Yacht Charters

Bill and Shannon Bailey Pacific Catalyst

Meg Swimlear Sikumi

Randy Burke Bluewater Adventures

Butch Laughlin Alaska Fly n' Fish Charters

Gary Carlson Spirit Walker Expeditions

Dennis Rogers Alaska Sea Adventures

The letter is also signed by the following companies:

Dan Blanchard American Safari Cruises

Ronn Patterson Dolphin Charters

Jeff Behrens Fantasy Cruises

Ken Gerkin The Boat Company

Dan Liden Snow Goose

Jim Kyle Alaska on the Home Shore

Rick Fleischman Sound Sailing

Terry Harvey

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Sent: Tuesday, February 02, 2010 11:04 PM
To: Rep. Bryce Edgmon; Rep. Cathy Munoz; Rep. Bob Buch
Subject: HB 295 - Hello from Pelican!

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I'm concerned that this bill will displace our fish-buying business, Shoreline, Inc. We've anchored in front of the Mite Cove parcel for 25 years and provide vital support for the troll fleet. Private ownership of the uplands would threaten our use of shorelines from the beach and a waterline from the uplands.

I'm also concerned that DNR's Northern Southeast Area Plan (NSEAP) is being disregarded by this bill. Please take a moment to read the attached letter. Louie Flora, staff to Rep. Wilson, has information and maps about a potential land substitution for the Mite Cove parcel.

Thank you for your consideration. Please contact me for any further information.

Regards,

Deb Spencer
Owner, Shoreline, Inc.
735-2495

Terry Harvey

From: Rep. Cathy Munoz
Sent: Friday, February 19, 2010 10:20 AM
To: Terry Harvey
Subject: FW: HB 295 University Lands
Attachments: Letter of Objection.doc; Executive Order.TIF

Terry, please include in our committee file on HB 295. Cathy

From: Carolyn [mailto:sharkey@acsalaska.net]
Sent: Friday, February 19, 2010 9:57 AM
To: Rep. Cathy Munoz
Cc: Kendra Kloster; Bill Martin; JB Martin
Subject: HB 295 University Lands

Please find attached a document requesting that all Tenakee lands be withdrawn from HB 295. The document is self-explanatory and has been unanimously approved by the Tenakee Traditional Council. We are also attaching a copy of the Executive Order 7179.

We ask this for a second time. Our traditional lands are very sacred to us. We met with the Governor and his concern was enough to give us hope that our request could be honored.

If you have any questions, please do not hesitate to contact myself or any of our Council members. If you feel it necessary for me to testify at the hearing, please, let me know and I will make the time.

Gu nul' cheesh!

John Martin, Sr.
Chairman
Tenakee Traditional Council
780-6195 or
209-0029

Terry Harvey

From: Rep. Cathy Munoz
Sent: Sunday, March 07, 2010 10:05 AM
To: Terry Harvey
Subject: FW: HB 295

-----Original Message-----

From: Joan McBeen [mailto:joanmcbeen@yahoo.com]
Sent: Friday, March 05, 2010 4:04 PM
To: Rep. Cathy Munoz
Subject: HB 295

Dear Representative Cathy Munoz,

Please amend HB 295 and remove all Tenakee parcels from the selection of the University. I agree with Resolution 2010-16 passed unanimously by the City Council to remove these parcels.

The development of these parcels would create a burden to our infrastructure and the financial responsibilities would be passed on to our citizens.

Thank you for this opportunity to testify.
Joan McBeen

Terry Harvey

From: Rep. Cathy Munoz
Sent: Friday, March 05, 2010 9:43 AM
To: Terry Harvey
Subject: FW: re HB 295

From: Charles E. King [mailto:kingc@science.oregonstate.edu]
Sent: Friday, March 05, 2010 8:34 AM
To: Rep. Cathy Munoz; Rep. John Harris; Rep. Wes Keller; Rep. Charisse Millett; Rep. Sharon Cissna; Rep. Berta Gardner; Rep. Bob Herron
Subject: re HB 295

Honorable Friends on the House Community and Regional Affairs Committee,

I write once again as a homeowner and registered voter in Tenakee Springs. My previous arguments are still valid, but will not be repeated herein. Instead I will add my voice to that of our unanimous city council and urge you to consider that the University and State have little to gain, and much to lose by passage of HB 295. In our view what is at stake is the very character of our daily lives. While there are issues that might well justify such a mandate, this is not one of them and to make it so cheapens both our citizenry and the legislative process.

Respectfully yours,

Charles E. King
302 Tenakee Trail/PO Box 54
Tenakee Springs, AK 99841

Terry Harvey

From: Rep. Cathy Munoz
Sent: Sunday, March 07, 2010 10:04 AM
To: Terry Harvey
Subject: FW: [SPAM] UNIVERSITY LAND BILL

From: Stan Moberly [mailto:stan.moberly@bigpond.com]
Sent: Saturday, March 06, 2010 3:18 PM
To: Rep. Cathy Munoz; Rep. Bob Herron
Cc: Rep. John Harris; Rep. Wes Keller; Rep. Charisse Millett; Rep. Sharon Cissna; Rep. Berta Gardner
Subject: [SPAM] UNIVERSITY LAND BILL

Dear Rep. Munoz & Herron, co-chairs of the House Community & Regional Affairs Committee:

I am writing to request you honor the Tenakee Springs City Council's request to have all proposed land transfers within the city limits of Tenakee Springs be eliminated from HB 295.

Removing this very small amount of land from the bill would not be burdensome to the University of Alaska; i.e. removing the parcel would be insignificant to the University's overall funding.

However, transfer of those lands for University fund-raising would be VERY significant to our city. Removing the lands within the city limits of Tenakee Springs is a chance to do something positive for one of the small villages in the State. We have struggled to keep the city viable and our long range plan includes utilization of the lands in question which are in the city limits. Please help us by honoring our City Council's request. If the State is ever to achieve the goal of having remote villages being more capable of "standing on their own feet" you have to help us!

Thank you for your consideration.

Sincerely,

Stan Moberly

606 E. Tenakee Avenue
Tenakee Springs, AK 99841 USA

● 07-736-2251

stan.moberly@attglobal.net

No Habitat: No <"}}}}><

CITY OF TENAKEE SPRINGS

Don Pegues
MAYOR

P.O. Box 52
Tenakee Springs, Alaska 99841

February 10, 2010

Alaska State House of Representatives

Representative Bill Thomas

Dear Rep. Thomas,

I want to thank you for your hard work representing us on HB 295. Last Thursday the Tenakee Springs City Council adopted Resolution 2010-16, relating to the community's desire to have ST 1003 excluded from the list of lands to be granted to the University of Alaska. The Resolution is enclosed. Also enclosed, are three pieces of correspondence between the City of Tenakee Springs and DNR, the Stipulation for Settlement Tenakee Springs vs. State of Alaska 1JU 80-1666, March 9, 1981, and three pages from the Northern Southeast Area Plan (NSEAP). Tenakee Springs strongly desires to be excluded altogether from the University Bill and if that is not possible to have an amendment inserted binding the University to the terms of the Stipulation for Settlement. We intend to convey this material to Senator Kookesh, and if you have the opportunity, hope you would urge him to help with the exclusion.

Much of the concern expressed at the public hearing on resolution 2010-16 and by the Council members centered around whether the Stipulation with the land-use restrictions cited in the March 9, 1981 Court Order would remain in effect if the land were transferred to the University. In 1977, when the US Forest Service wanted to build a road and log dump and cut three timber units within the corporate boundaries of Tenakee Springs, the City's objections resulted in a Memorandum of Understanding between the city of Tenakee Springs the State of Alaska and Alaska Pulp Corporation. The US Forest Service declined to participate. A part of the MOU promised that DNR would convey to Tenakee Springs the lands selected under statehood with the understanding some would be retained by the State. When the conveyance was not forthcoming the City sued the State and the end result was an court order approving the Stipulation for Settlement, 1JU 801666, March 9, 1981. In the Stipulation for Settlement paragraph 1.2 describes a tract of land to be retained by the state for "commercial, industrial, row right away and borrow pits purposes... containing 261 acres, more or less." This track is designated C34 in the NSEAP. Paragraph 1.4, describes a "public facilities reserve, 40 acres more or less" and is designated C30 in NSEAP. C30 encompasses C31 and C32. The University list erroneously adds the acreages of C30, C31 and C32 together totaling 80 acres when the actual acreages 40 as a result the total acreage in ST 1003 is 301 acres. In the correspondence from 2005 enclosed DNR stated that they do not believe this day to be bound by the terms of the stipulation for settlement as to land-use.

The community is very concerned about the potential increased burden for new services that may be placed upon us. Extending power lines, improved access, and snow removal are all

CITY OF TENAKEE SPRINGS

things that would overwhelm our limited budget. If the University is not bound by the Stipulation for Settlement and is able to privatize these lands that burden could be considerably

greater. A fiscal note to the bill from the University of Alaska indicates that the 20-year projected income from these lands might produce 1% of the annual income required by the University. The 301 acres in Tenakee comprises only .11% of the total land grant in HB 295. Consequently the income derived from this land would be less than .0013 percent of the University's annual requirement. The potential burden to the city, in our minds, far outweighs the potential gain to the University.

The City of Tenakee Spring would be grateful for any help that you could provide in excluding the Tenakee Lands from the University Bill. One of our Council members, in contact with your office, has indicated you might be willing to forward amendment language to the House Committee on Community and Regional Affairs for an exclusion amendment. The Community and Regional Affairs Committee is meeting this week. I know that you work closely with Senator Kookesh and hope that together you can get exclusion amendments in both HB 295 and SB 225.

Respectfully,

Don Pegues, Mayor
City of Tenakee Springs

CC: Alaska House of Representatives
Committee for Community and Regional Affairs

City of Tenakee Springs

RESOLUTION 2010-16

In the Council
February 11, 2010

Introduced by
Council President

A RESOLUTION FOR THE CITY OF TENAKEE SPRINGS, ALASKA, SUPPORTING AN AMENDMENT TO HB 295 AND SB 225, "UNIVERSITY LAND GRANT", EXCLUDING PARCEL ST 1003 FROM CONVEYANCE TO THE UNIVERSITY OF ALASKA

- WHEREAS, the Alaska Department of Natural Resources, (DNR) adopted the Northern Southeast Area Plan (NSEAP) on October 15, 2002; and
- WHEREAS, the City of Tenakee Springs, the public, various stakeholders and other government agencies had input into the land-use designations for local state lands in the NSEAP; and
- WHEREAS, the NSEAP acknowledges that the State of Alaska shall retain certain lands in state ownership and manage them for the purposes designated in the Stipulation of Settlement pursuant to the order of the Alaska Superior issued on March 9, 1981 in case number IJU-80-1666; and
- WHEREAS, if these lands in ST 1003 are conveyed to the University of Alaska, the University remains bound by the management uses designated for these lands in the IJU-80-1666, March 9, 1981 court order; and
- WHEREAS, the Parcel Number ST 1003 includes parcels identified in the NSEAP as C30 which includes C31 and C32, 40 acres more or less, is designated to be managed "as a public facilities reserve" by court order; and
- WHEREAS, the NSEAP states, "Other than development that may be related to marine support at the boat harbor, further development of this parcel is not considered appropriate."; and
- WHEREAS, Parcel Number ST 1003 also includes the parcel identified in the NSEAP further as C24, 261 acres more or less, and the NSEAP and March 9, 1981 Court Order declares that "Lands within this parcel are to be retained by the state"; and
- WHEREAS, the Stipulation for Settlement, (para 1.4), Tenakee Springs vs. State of Alaska, IJU-80-1666, March 9, 1981 stipulates these retained lands to be managed for "Commercial, industrial, right of way, and borrow pits" uses; and
- WHEREAS, DNR did not solicit public comment from residents of Tenakee Springs for the 2010 legislation (HB 295) when designating Parcel ST 1003 for conveyance to the University; and

WHEREAS, all of the parcels in ST 1003 are within the city limits of Tenakee Springs; and

WHEREAS, fiscal Note 3 of House Bill 295 indicates, "after substantial additions to the LGTF endowment UA can see modest operating revenue i.e., in approximately 20 years UA anticipates annual investment earnings on new land sales to reach 1% of state general fund support or \$2.6M."; and

WHEREAS, the total acreage of land recommended for conveyance from the State of Alaska to the University of Alaska in HB 295 and SB 225 is 260,000 acres; and

WHEREAS, parcel number ST 1003 is approximately 301 acres in size, which equates to .0013 percent of the total acreage of land to be conveyed to the University; and

WHEREAS, the City of Tenakee Springs would be unduly burdened by conveyance of these lands compared to the relatively insignificant additional revenue this parcel would contribute to the University's budget;

THEREFORE BE IT RESOLVED by the Common Council of the City of Tenakee Springs, Alaska that we support an amendment to HB 295 and SB 225 either removing the transfer of ST 1003 to the University of Alaska or binding the University to the terms of the Stipulation for Settlement in IJU-80-1666, City of Tenakee Springs vs. State of Alaska, March 9, 1981

ADOPTED 7 Yes, 0 No THIS 11th DAY OF February 2010.

Don Pegues
City Council President
Ex officio MAYOR

ATTEST:

Mary M. Almy
Acting City Clerk

CITY OF TENAKEE SPRINGS

Don Pegues
MAYOR

P.O. Box 52
Tenakee Springs, Alaska 99841

March 3, 2010

House Community & Regional Affairs Committee

The Honorable Cathy Munoz, Co-Chair
State Capitol Room 409
Juneau AK, 99801

The Honorable Bob Herron, Co-Chair
State Capitol Room 411
Juneau AK, 99801

Dear Representatives Munoz and Herron:

I am writing in regard to HB 295, which is scheduled to be heard before the House Community & Regional Affairs Committee next week. That bill provides for the transfer of designated lands to the University of Alaska, as listed in the "University of Alaska Land Grant List 2005." Among the lands recommended for transfer are those contained in ST 1003, which fall within our city boundaries. The City was opposed to this proposed transfer in 2005, and still opposes it today. The Tenakee Springs City Council recently adopted Resolution 2010-16, expressing the community's desire to have ST 1003 removed from the list of lands to be granted to the University of Alaska.

This is not the first time these parcels have been the center of controversy. In 1977, when the U.S. Forest Service proposed a road, log dump and harvest of three timber units within the corporate boundaries of Tenakee Springs, the City's objections led to a Memorandum of Understanding between the City of Tenakee Springs, the State of Alaska and Alaska Pulp Corporation. That MOU, in part, provide that the Alaska Department of Natural Resources would convey to the City lands selected by the State while some lands would be retained by the State. When the conveyances did not occur, the City sued the State. That litigation was resolved in a Judgment¹ against the State in 1981, adopting a Stipulation for Settlement entered into by the parties. That Judgment was subsequently reaffirmed and amended by the court in 1984 and 1986, again by stipulation of the parties.

The Stipulation for Settlement provides that the State "convey to the City . . . fee simple title to all selected lands within the City's boundaries conveyed to the state by the Bureau of Land Management, except for the sites and acreages set out below." The Settlement goes on to

¹ The Judgment from the Superior Court orders that "the failure or refusal of either party to comply with the terms of the Stipulation for Settlement, the other party shall be entitled to specific performance, special damages sustained by reason of the other party's non-performance, and costs and attorney's fees incurred in enforcing this judgment."

designate specific parcels that would remain with the State but with restrictions on their use or be transferred to the City for specified uses.

Two of those lands specifically excepted from the transfer to the City were lands designated as tracts C30 and C34 in the Northern Southeast Area Plan, adopted October 15, 2002. In 2005, DNR took the position HB 130 that tract C30 was not among the parcels in the 2005 list. The City is relying on DNR's position that C30 is, similarly, not included now in HB 295. However, if for some reason C30 is considered included in the 2010 legislation, the City objects. In reference to C30, DNR has noted:

The classification of parcels within the Tenakee community is greatly affected by a court order dated March 9, 1981 that identifies state lands for conveyance to the community and assigns uses to the lands retained by the state. This parcel is affected by paragraph 1.4 of that order, which designates it as a "public facilities reserve".

With the restriction on C30 that it be used only as a "public facilities reserve," it is unlikely that the University would desire to possess it with such restrictions.

As to C34, DNR observed:

This parcel includes all of those areas within Tenakee affected by paragraph 1.2 of the court order. It consists of two parts: an interior part within sections 15 and 22 situated eastward and upslope of the community, and a part within section 23 that stretches along the coast. The classification of parcels within the Tenakee community is affected by a court order dated March 9, 1981 that identifies state lands for conveyance to the community and assigns uses to the lands retained by the state. Paragraph 1.2 designates this parcel for "commercial, industrial, road right-of-way, and borrow pits".

Lastly, there are two smaller parcels, designated as tracts C31 and C32 in the Northern Southeast Area Plan, that comprise part of the ST 1003 lands. These parcels did not transfer from BLM to the State until 1986 and 2003, respectively. These delays were because of the existence of un-adjudicated claims to the land at the time the remaining selected lands were transferred to the City in 1982. Those two parcels, selected by and transferred to the State under the Statehood Act, are subject to the same obligation to transfer them to the City under the terms of the Settlement. To that end, the City is considering a quiet title action to resolve that oversight.

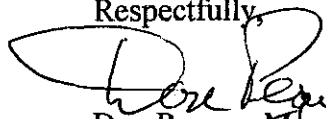
It appears that transfer of these parcels would not promote the intent of the legislation: to provide clear title to the lands and provide for management of revenue from that land as university receipts. Ownership of C31 and C32 is in dispute, and the remaining parcels are subject to the restrictions set forth in the Settlement. Consequently, the purposes of the proposed land transfer would be frustrated, if not unobtainable. Further, this community is very concerned about the potential increased burden for new services that may be placed upon us. Extending

power lines, improved access and snow removal are just a few of the possible things that would overwhelm our limited budget.

A fiscal note to the bill from the University of Alaska indicates that the 20-year out annual projected income from the total new land grant might produce 1% of the annual income required by the University. The acreage in Tenakee comprises only .11% of the total land grant in HB 295, meaning the income derived from this land would be less than .0013 percent of the University's annual requirement. When considering the restrictions the University would take this land subject to, the potential burden to the City far outweighs the gain to the University.

We ask that ST 1003 be removed from HB 295, and appreciate your attention to this matter.

Respectfully,


Don Pegues, Mayor
City of Tenakee Springs

Cc: Representative Harris
Representative Cissna

Representative Keller
Representative Gardner

Representative Millett

Enclosure: Resolution 2010-16

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 CITY OF TENAKEE SPRINGS,
4 a Second Class City,

5 Plaintiff,

6 v.

7 STATE OF ALASKA,

8 Defendant.

9 No. 1JU-80-1666

10 STIPULATION FOR SETTLEMENT

11 It is hereby stipulated by and between the parties
12 that all claims of the plaintiff set forth in its complaint
13 dated December 4, 1980 are hereby compromised and settled in
14 full according to the following terms:

15 1. The state agrees to convey to the City on or
16 before July 1, 1981 fee simple title to all selected lands
17 within the City's boundaries conveyed to the state by the
18 Bureau of Land Management, except for the sites and acreages
19 set out below. The land to be conveyed to the City, and the
20 sites and acreages to be retained by the state, are set out
21 in Exhibit 1 to this stipulation, which is expressly made a
22 part of this agreement. As reflected in Exhibit 1, the state
23 shall convey to the City fee simple title to 2958 acres, more
24 or less; provided, however, that it is understood that it is
25 the intent of the parties that the City receive under this
26 stipulation fee simple title to all selected lands within
27 the City's boundaries conveyed to the state by the Bureau
28 of Land Management, except for the sites and acreages set
29 out below, regardless of whether the acreage received by the
30 City under this stipulation is more or less than 2958 acres.
31 The state shall retain 1027 acres, more or less. All sites
32 and acreages retained by the state will be subject to existing

1 rights-of-way and easements. As reflected in Exhibit 1, the
2 state shall retain the following sites and acreages for the
3 purposes designated:

4 L.L. Public recreation area at Indian River
5 201 acres more or less, described as follows:

6 All state owned uplands lying within:

7 T.47S., R.63E., C.R.M.

8 Sec. 15 SE 1/4 SW 1/4, SW 1/4 SW 1/4 SE 1/4

9 Sec. 22 E 1/2 NW 1/4, N 1/2 NE 1/4 SW 1/4,

10 W 1/2 W 1/2 NE 1/4, S 1/2 NE 1/4 SW 1/4 NE 1/4,

11 SE 1/4 SW 1/4 NE 1/4, N 1/2 SE 1/4,

12 S 1/2 SE 1/4 NE 1/4, S 1/2 N 1/2 SE 1/4 NE 1/4;

13 And excluding:

14 All state owned uplands lying within:

15 T.47S., R.63E., C.R.M.

16 Sec. 22 S 1/2 SW 1/4 NE 1/4, NW 1/4 SW 1/4 NE 1/4,

17 N 1/2 NE 1/4 NW 1/4 SE 1/4, N 1/2 NW 1/4

18 NW 1/4 SE 1/4,

19 Containing 40 acres, more or less.

20 The net acreage to be retained by the state is 201 acres, more
21 or less. The 40 acres, more or less, to which the City shall
22 receive title encompasses the campground presently maintained
23 by the City. The City will have a continuing responsibility
24 to maintain the campground and to provide for its use for
25 public recreation purposes only. Any other use will result
26 in reverter to the state. Further, the City may not manage
27 the campground in a way so as to interfere with the state's
28 tourism and recreation objectives as determined by the Com-
29 missioner of Natural Resources for the 201 acres, more or less,
30 which the state will retain pursuant to this agreement. It
31 is understood that, should the campground eventually receive
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CARPENEY & COUNCIL
ATTORNEYS AT LAW
410 SEWARD STREET, SUITE 200
JUNEAU, ALASKA 99801
1007 666-1166

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1 substantial use by tourists, title to the campground, and
2 responsibility for its maintenance, may, subject to the state's
3 concurrence, be transferred to the state.

4 1.2. Commercial, industrial, road right-of-way
5 and borrow pits; 261 acres, more or less. It is understood
6 that the state will allow the removal of reasonable amounts
7 of material under reasonable conditions from all borrow pits,
8 for the purpose of personal use in residential improvement or
9 construction, driveway construction, and landscaping. The
10 land to be retained by the state for commercial, industrial,
11 road right-of-way and borrow pit purposes is described as
12 follows:

13 All state owned uplands lying within:

14 T.47S., R.63E., C.R.M.

15 Sec. 15 SE 1/4 SE 1/4, E 1/2 SW 1/4 SE 1/4;

16 NW 1/4 SW 1/4 SE 1/4

17 Sec. 22 NE 1/4 NE 1/4 NE 1/4

18 Sec. 23 W 1/2 NW 1/4, SE 1/4 NW 1/4,

19 W 1/2 NE 1/4 NW 1/4, SE 1/4 NE 1/4 NW 1/4,

20 S 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4,

21 W 1/2 SE 1/4 NE 1/4, NW 1/4 NE 1/4 SE 1/4,

22 Containing 261 acres, more or less.

23 1.3. State land disposal; 245 acres, more or
24 less, described as follows:

25 All state owned uplands lying within:

26 T.47S., R.63E., C.R.M.

27 Sec. 24 N 1/2 N 1/2, N 1/2 S 1/2 NW 1/4,

28 N 1/2 SW 1/4 NE 1/4, SE 1/4 NE 1/4,

29 Containing 245 acres, more or less.

30 1.4. Public facilities reserve; 40 acres, more
31 or less, described as follows:

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All state owned uplands lying within:

T.47S., R.63E., C.R.M.

Sec. 21 S 1/2 SE 1/4 NE 1/4

Sec. 22 S 1/2 SW 1/4 NW 1/4, NW 1/4 SW 1/4,

Containing 40 acres, more or less.

1.5. Airport and personal use timber; 280 acres, more or less. It is understood that the state will allow removal of reasonable amounts of timber under reasonable conditions, for the purpose of personal use in residential improvement or construction. The land to be retained by the state for these purposes is described as follows:

All state owned uplands lying within:

T.47S., R.63E., C.R.M.

Sec. 15 SW 1/4 SW 1/4

Sec. 16 SE 1/4, E 1/2 SW 1/4,

Containing 280 acres, more or less.

1.6. The lands described in ADL No. 101700, consisting of 1 acre, more or less.

2. As provided in the September 26, 1977 Memorandum of Understanding, attached as Exhibit A to the complaint, fee simple title to the tidelands and submerged lands described in ADL No. 101019 will be transferred to the City. The lands shall be used for public purposes only. Any other use will result in reverter to the state.

3. As provided in the September 26, 1977 Memorandum of Understanding, the state will expeditiously consider the City's application for conveyance of tidelands and submerged lands adjacent to any selected lands conveyed to the state by the Bureau of Land Management. This paragraph applies to tidelands and submerged lands other than those described in ADL No. 101019, the conveyance of which is provided for in paragraph 2 above.

1 4. It is understood that conveyance of lands to the
2 City under this stipulation will be accomplished without either
3 party having to bear survey costs.

4 5. The state will grant pipeline rights-of-way to
5 the City according to normal procedures. The state recognizes
6 that the City is considering a hydroelectric and domestic
7 water supply project near Indian River; the state acknowledges
8 that the purpose of its retention of land in the public recrea-
9 tion area at Indian River does not preclude a pipeline right-
10 of-way.

11 6. All state land sales will be subject to local
12 zoning ordinances to the extent authorized by law.

13 7. This stipulation is to be construed subject to
14 the September 26, 1977 Memorandum of Understanding, attached
15 to the complaint as Exhibit A. The parties hereby reaffirm
16 the provisions of that Memorandum of Understanding.

17 8. The parties will bear their own costs and
18 attorney's fees.

19 9. The state agrees that judgment may be immediately
20 entered in favor of the City on the terms set out in this
21 stipulation, and the parties agree that upon failure or refusal
22 of either party to comply with the terms of this stipulation,
23 the other party shall be entitled to specific performance,
24 special damages sustained by reason of the other party's non-
25 performance, and costs and attorney's fees incurred in enforcing
26 the terms of this stipulation.

27 DATED this 26th day of February, 1981.

28 WILSON L. CONDON
29 ATTORNEY GENERAL

30 BY: Ann E. Meyers
31 Assistant Attorney General
32 Attorneys for defendant

CARPENETTI & COUNCIL

BY: W. T. Council
William T. Council
Attorneys for plaintiff

STIPULATION FOR SETTLEMENT

Page 5

EXHIBIT B

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

1
2
3 CITY OF TENAKEE SPRINGS,)
4 a Second Class City,)
5)
6 Plaintiff,)
7)
8 v.)
9)
10 STATE OF ALASKA,)
11)
12 Defendant.)

No. 1JU-80-1666

JUDGMENT

13 The parties to this action have entered into a
14 Stipulation for Settlement dated ~~December 26, 1980~~ ^{February 26, 1981}, agreeing
15 that judgment may be entered against the defendant State of
16 Alaska as set out in that Stipulation for Settlement.

17 IT IS ORDERED that the parties shall comply with
18 the terms set out in the Stipulation for Settlement.

19 IT IS FURTHER ORDERED that upon the failure or
20 refusal of either party to comply with the terms of the
21 Stipulation for Settlement, the other party shall be en-
22 titled to specific performance, special damages sustained
23 by reason of the other party's non-performance, and costs
24 and attorney's fees incurred in enforcing this judgment.

25 DATED this 9th day of March, 1981.

Thomas B. Stewart
Superior Court Judge

26 Submitted by:
27 CARPENETTI & COUNCIL

28 By William T. Council
29 Attorney for City
30 of Tenakee Springs.

31 Approved as to form and
32 content by:

WILSON I. CONDON
ATTORNEY GENERAL

By Ann E. Cronin

002188

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

1	CITY OF TENAKEE SPRINGS,)	
2	a Second Class City,)	
3)	
4	Plaintiff,)	IN THE DISTRICT COURT
5)	State of Alaska, District
6	v.)	FILED 07 1981
7	STATE OF ALASKA,)	Barbara A. Howe, Clerk
8	Defendant,)	By: <i>[Signature]</i> Deputy
9)	NO. IJU-80-1666

JUDGMENT

The parties to this action have entered into a Stipulation for Settlement dated December----, 1980, agreeing that judgment may be entered against the defendant State of Alaska as set out in that Stipulation for Settlement.

IT IS ORDERED that the parties shall comply with the terms set out in the Stipulation for Settlement.

IT IS FURTHER ORDERED that upon the failure or refusal of either party to comply with the terms of the Stipulation for Settlement, the other party shall be entitled to specific performance, special damages sustained by reason of the other party's non-performance, and costs and attorney's fees incurred in enforcing this judgment.

DATED this 9th day of March, 1981

[Signature]
Superior Court Judge

Submitted by:
CARPENETTI & COUNCIL
By *[Signature]*
William T. Council
Attorney for City
of Tenakee Springs

Approved as to form and content by:

WILSON L. CONDON
ATTORNEY GENERAL

CERTIFICATION

The undersigned certifies that on the 9th day of March, 1981, a true copy of this document was served on the following attorneys:
[Signature]
[Signature]
By *[Signature]*

CARPENETTI & COUNCIL
Attorneys at Law
310 SEWARD STREET, SUITE 203
JUNEAU, ALASKA 99801
(907) 586-1726

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SEP 21 1977

CITY OF TENAKEE SPRINGS

By *BP*
MEMORANDUM OF UNDERSTANDING

SUBJECT

The subject of this Memorandum is a proposal by Alaska Lumber and Pulp Company for timber harvesting and associated activities and developments pursuant to a long term contract with the United States Forest Service. Alaska Lumber and Pulp Company proposes to operate in the vicinity of the City of Tenakee Springs. The State of Alaska, Alaska Lumber and Pulp Company, and the City of Tenakee Springs recognize that multiple stipulations are necessary in order to permit the proposed operations to proceed in a climate of consensus and cooperation. This Memorandum sets forth said stipulations and constitutes an agreement by the parties to observe them in good faith.

PARTIES

The parties to this Memorandum are the State of Alaska [State], the City of Tenakee Springs [City], and the Alaska Lumber and Pulp Company [AL&P] (including its agents, employees, subsidiaries, and subcontractors).

JURISDICTION

Each party pledges to comply with and carry out the stipulations to the fullest extent possible regardless of whether it has complete jurisdiction or authority over the subject matter of each stipulation.

DEFINITIONS

(1) The "operating area" means that portion of Chichagof Island southeast of a line from the mouth of Ten Mile Creek on Tenakee Inlet to the mouth of Freshwater Creek on Freshwater Bay, together with adjacent tidelands and submerged lands.

(2) The "five year plan" means the timber harvesting plan set forth in the Final Environmental Impact Statement for the Alaska Lumber and Pulp Company 1976-1981 Operating Period for the operating area, together with those additional elements, plans, and details represented to the City and the public.

(3) The "Indian River Road" means the road to be constructed for harvesting and removing timber from the Indian River drainage to Sunny Cove on Tenakee Inlet.

(4) The "dump site" means the log storage/transfer site to be located at Sunny Cove on Tenakee Inlet.

(5) The "Pavlov River Road" means the road to be constructed from the Pavlov River drainage to Kennel Creek on Freshwater Bay.

STIPULATIONS

(1) Timber Harvesting/Associated Developments

(a) Timber harvesting and associated developments will be permitted in the Indian River drainage in the amount and at the locations previously specified. Harvested timber will be removed via the Indian River Road to the dump site at Sunny Cove. Except for those individuals who are or who become permanent residents of

the City, loggers and other AL&P personnel involved in the Indian River operation will reside at the logging camp at Corner Bay. However, one caretaker will be permitted to reside at a single wood frame dwelling to be constructed by AL&P on the worksite adjacent to the Indian River Road.

(b) Present and future timber harvesting and associated developments in the Pavlov River drainage and the Kennel Creek area shall be carried out consistent with understandings reached by the Alaska Department of Fish and Game and United States Forest Service.

(2) Duration of Operations

Timber harvesting and associated developments in the operating area shall be completed by December 31, 1981. Additional timber harvesting using the Indian River Road or the dump site at Sunny Cove shall not be permitted until January 1, 1986, unless the consent of the City and the State is previously obtained after public hearing, and in no event until January 1, 1986. This does not apply to timber harvesting required by the existing contract between AL&P and the Forest Service in the event of disease or blowdown to the extent necessary to remove it. Future plans for logging operations in the Tenakee Area shall be coordinated with the City, the Alaska Department of Fish and Game and other concerned agencies and organizations to the extent their interest may be affected.

(3) Consistency with Plans

(a) Timber harvesting and associated activities in the Indian

river drainage shall be confined to those described in the five year plan and other materials presented to the public describing proposed operations in the area. Substantial modifications affecting the interests of the City shall be cleared with the City and the State prior to implementation; this does not apply to modifications resulting from the Interdisciplinary Team process unless said interests are affected.

(b) Modifications of plans for timber harvesting and associated developments in Pavlov River drainage and Kennel Creek area, to the extent they affect understandings reached with the Alaska Department of Fish and Game, shall be coordinated with said Department.

(4) Road Connections

Except for the Indian River Road, no roads shall be constructed to terminate at the Sunny Cove dump site or elsewhere within the limits of the City or immediately adjacent thereto until January 1, 1996, unless consented to by the City and the State. No road shall be constructed which connects the City of Hoonah or any other community or settlement to the operating area in a manner which would cause an influx of persons into the City until January 1, 1996, unless prior consent of the City and the State is obtained. The Indian River Road will be retired following the five year plan (December 31, 1981) and made impassable to motor vehicles (including ORV's and ATV's) except as may be required for access to potential domestic water supply developments or other facilities and uses as formally requested by the City. The directive of the preceding sentence may be modified by a subsequent cooperative agreement between the City, the State, and the US Forest Service governing access to and use of the Indian River Road and general management objectives for the area.

Roadbeds and roadsides will be seeded or similarly treated where the likelihood of erosion or instability problems exists.

(5) Water Quality

The Indian River will not be subjected to any impacts which result in a violation of applicable State and Federal water quality standards, or which would otherwise impair its capability to serve as a source of domestic water supply. AL&P will, at its own expense, purchase and install water quality monitoring equipment [turbidometer] satisfactory to the City at a location specified by the City; monitoring will be conducted by the City, which may request the assistance of the Department of Environmental Conservation. In the event of deterioration in the quality of the water in contravention of this stipulation appearing to result from the operations of AL&P, AL&P shall restore said water to a condition sufficient to meet the first sentence of this stipulation as soon as possible and at its own expense.

(6) Blasting

Blasting activities in conjunction with the construction and maintenance of the Indian River Road and adjacent sites shall be carried out with the use of a sequential timer, and only between the hours of 8AM and 5PM. Prior notice of blasting activities shall be posted at a conspicuous place in the City. AL&P will employ guards or take other necessary measures to insure the safety of residents in the area of blasting activities.

(7) Tidelands and Corps of Engineers Permits

The State will issue tidelands permits for the dump site at Sunny Cove and for the camp/dump site at Kennel Creek; said permits may recite or otherwise refer to the stipulations in this memorandum as well as understandings previously reached with the Alaska Department of Fish and Game. The State will recommend to the U.S. Army Corps of Engineers that permits issue to AL&P for the dump site at Sunny Cove and for the camp/dump site at Kennel Creek.

(8) Conveyances

The State will convey to the City title to any selected lands conveyed to the State by the Bureau of Land Management, except that the State may retain title to those sites necessary for present or anticipated essential public purposes. The State will convey to the City all tidelands and submerged lands within or subjacent to the Sunny Cove dump, and will expeditiously consider the City's application for conveyance of other tidelands and submerged lands adjacent to any selected lands conveyed to the State by the Bureau of Land Management.

(9) Trail Maintenance

The trail east of Tenakee Springs will be properly maintained and protected by AL&P against impacts which would render it impassable or difficult to use. The trail may be reconstructed and relocated as may be required to the satisfaction of the City. AL&P will construct a log protection structure or other suitable installations in the worksite area and at the intersection of the trail with the Indian River Road (to be in place annually only during the winter

months) sufficient to prevent snowdrifts.

(10) Worksite

The worksite shall be restored by AL&P to a natural condition to the fullest extent possible following completion of timber harvesting operations. The area will be bladed and seeded and debris will be burned.

(11) Regulation of Motor Vehicles

The City may establish speed limits and other traffic regulations consistent with Title 29, Alaska Statutes, for the segment of the Indian River Road lying within City limits, which regulations shall be complied with by all vehicles (including those operated by AL&P).

(12) Noise Control

Vehicles and other machinery operated by AL&P will be muffled so as to comply with State, Federal and local standards for noise control and otherwise to the fullest extent possible in view of the residential nature of the area.

(13) Monitoring

The State and City will periodically monitor and inspect operations in the vicinity of the City to insure compliance with this Memorandum.

(14) Future Operations

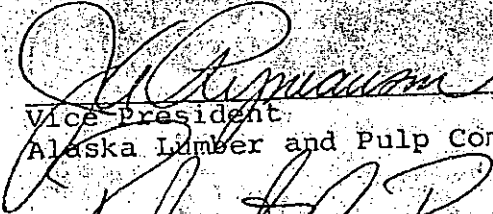
In the event a road is constructed connecting the Indian River drainage with the mouth of Ten Mile Creek on Tenakee Inlet, said road shall be used in any future operations to remove timber from the Indian River and adjacent drainages in lieu of the Indian River.

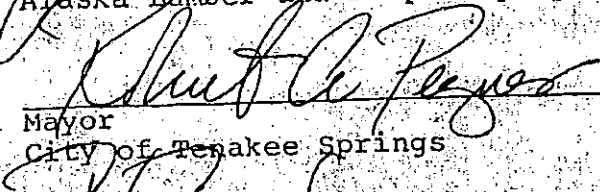
Road/Sunny Cove log storage site.

MODIFICATION

The parties recognize that the essence of their mutual endeavor is to prevent (or where unpreventable, to minimize) adverse social and environmental impacts unacceptable to the residents of the City. It is, therefore, the intent of the parties that any subsequent modification of this Memorandum shall be consistent with this objective and shall require the agreement of all parties.

DATED this 26th day of September,
1977, at Juneau, Alaska.


Vice President
Alaska Lumber and Pulp Company


Mayor
City of Tenakee Springs


Commissioner
Alaska Department of Natural Resources

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8
2

Terry Harvey

From: Rep. Cathy Munoz
Sent: Monday, February 15, 2010 2:01 PM
To: Mfay
Cc: Terry Harvey
Subject: RE: Re : Removal of MOSER BAY PARCEL from HOUSE BILL NO. 295

Dear Michael, thank you for contacting me. HB 295 is scheduled for a hearing in the Community and Regional Affairs committee on Thursday at 8:00 a.m. I would recommend that you contact Rep. Johansen to see if he is interested in offering an amendment on this parcel. I will be sure to include your comments in the committee file that will be presented to the CRA members on Thursday. If you have questions about the bill or the process, please contact Terry Harvey in my office at 465-5392. Thanks again, Cathy Munoz

-----Original Message-----

From: Mfay [mailto:mfay@uuplus.net]
Sent: Friday, February 12, 2010 10:47 PM
To: Rep. Cathy Munoz
Subject: Re : Removal of MOSER BAY PARCEL from HOUSE BILL NO. 295

Re : Removal of MOSER BAY PARCEL from HOUSE BILL NO. 295, University of Alaska Lands Bill

Dear Representative Munoz,

My name is Mike Fay. My only home is on Long Arm, Moser Bay, north of Ketchikan. To see the parcel of land deep in Moser Bay handed over to the University of Alaska scares the heck out of me and my neighbors. We live in Moser Bay, and many thousands more visit it every year, because it is one of the most beautiful, tranquil, and ecologically intact places in all of North America. Yet is a stone's throw from an international airport and about 20 minutes by boat from Ketchikan. It is of enormous scenic value that our local economy depends on.

The bottom line is this place is already one of the most popular spots in all SE Alaska for recreation. People come from all over the globe to this exact spot by the thousands every year to witness the beauty, and to fish, crab, shrimp, hike, and sight see from boats and planes and on foot. That represents millions of dollars a year for the local and Alaskan economy and lots of jobs for charter boats, fishing guides, airplanes. As places like this become more rare on Earth the value of keeping this parcel untouched is going to increase exponentially.

To log or to subdivide this particular parcel would completely undermine the highest and best use of this land which is to retain its natural beauty. The proceeds from logging are one off, and pale in comparison with one year's tourist revenue. You can cut this forest once in 100 years, killing the recreational value of the land that will produce more and more every year for 100 years. Look at what happened to the now clear cut Slide Ridge near Whipple Creek as well as another former University parcel in the Mountain Point area south of town. They have become permanent eye sores for the tens of millions of tourists that will visit Ketchikan over the next decade. Not to mention the ecological nightmare of slides and silatation that have come with these cuts. In January I was amazed to see huge rivers of water coming right down the side of these very steep cuts. Come to

Ketchikan and look at these slides. Look at how long it is going to take for timber to come back. We will never, ever get the cedar back, only weedy Hemlock forest. No restoration, no management just clear cut and send out the wood in the round and benefit a very few. I just do not see this as the vision for the future of my home town.

You might be thinking "that is what everyone says", but this is not just one more parcel. The depths of Moser Bay are the heart of the recreational tourist industry in Ketchikan. There are at least 30 boats that visit the bay on every day of the summer for months. To mar this landscape would be a blunder of huge proportion.

I implore you to remove the Moser Bay Parcel from the University of Alaska lands bill and to permanently preserve it as a DNR managed property for its landscape values.

If this land is handed over to the University I will protest with vigor any effort to log it. It is mostly hemlock located on very steep slopes. And in any case the majority of wood that leaves Ketchikan is still exported in the round, creating few jobs locally, but good revenues for a very few who have political connections. If we lose this battle I will move, selling my land and my home at a loss because its value will certainly evaporate with any logging plan that goes into this area. Why not let the people who live here decide the fate of this land? Clear cut is not an option here. Using my connections with National Geographic I would be willing to work with the State to increase tourist revenue, and to publicize this incredible place.. I am sure that most students at U of A would agree with our opinion.

Resident Moser Bay,

J. Michael Fay
Box 8561 Ketchikan, AK 99901
907-254-1902
mfay@ngs.org



ALASKA COASTAL QUEST

2-11-10

Representative Paul Seaton
Alaska State Legislature
Juneau, Alaska

Dear Representative Seaton:

I understand that you recently held hearings on the University Lands bill, HB 295. I would like to encourage you to delete Hook Arm on Dall Island from this legislation. Almost all of the outer coast of Dall Island is wilderness. The U.S. Forest Service recognizes this by placing in a scenic recreation category. Allowing Hook Arm to be sold for development destroys the wilderness integrity of the outer coast of this magnificent island. As a charter boat operator specializing in ecotourism, I see this area as having tremendous economic potential for water oriented outdoor wilderness recreation.

Yours truly,

Dale Pihlman

T'INAA GEI TLINGIT NATION

A Sovereign Tribe

February 17, 2010

The Tenakee Traditional Council is, once again, serving notice to all entities claiming a present or future interest in uplands, submerged lands, and waters in the vicinity of Tenakee, Alaska, that it protests and gives notice of objection to any proposed conveyance of an interest in such lands, including proposed conveyances of ADL 107311 and ADL 107312 to the City of Tenakee Springs and/or to the University of Alaska.

These traditional lands, waters and resources have been occupied by, used by, and claimed by the Tenakee Tribe as original Tlingit inhabitants. These lands, waters and resources were not conveyed to any other entity by the Tenakee Tribe at any time, nor has it been abandoned. The Tenakee Tribe has consistently and strongly objected to any such conveyance. The Tenakee Tribe never agreed to any provisions of the Alaska Native Claims Settlement Act or any other statute purporting to divest it of its interest in those lands. Moreover, the Tlingit village of Tenakee Springs was not granted land selection rights under ANCSA or any compensation for any taking of its lands. We maintain our inherent and aboriginal rights to those lands, waters and resources and because the Tenakee Tribe has been a sovereign Tribe since before the arrival of the non-natives on our lands, we intend to exercise our right as a sovereign tribe to maintain our land so as to confirm the existing title of the Tenakee Tribe. Any conveyance of rights to these lands, waters and resources is done subject to the superior and prior claim of the Tenakee Tribe to such lands, waters or resources. Any trespass upon those lands, waters or resources is objected to and is without the permission, explicit or implicit, of the T'inaa Gei Tlingit Nation.

President Hoover, in 1930, signed the Tongass National Forest document that listed Tenakee as a village. This is documented proof of the village's existence. The area proclaimed for Tenakee was much larger than the 17 acres set aside by President Roosevelt in 1935.

President Roosevelt recognized the existence of the Tenakee Tribe in 1935 by issuing an Executive Order 7179 to ensure that the Tribe was not disturbed in perpetuity! The Tenakee land has never been owned by the federal government. BLM surveyed it for the

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Juneau, Alaska 99802

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Fax: (907) 780-6195

E-Mail: sharkey@acsalaska.net

President of the United States so that our village people would not be bothered and to avoid controversies about ownership of the land. This land belongs to the Tenakee Tribe in perpetuity. The President referred to this Executive Order as a Skookum Paper. Now the state of Alaska has taken it upon themselves to change the content and the intent of the Executive Order. Our elders and Clan Leaders used to state that "everyone knows who this land belongs to." In a visit to Washington, D.C. Senator Ted Stevens stated that this claim has never been disputed.

There was a report done by the University of Alaska Fairbanks for the Southeast Alaska Landless Coalition referred to as the ISER Report. Tenakee is included in that report and gives a very clear description of the Tenakee Tribe's land and resource holdings.

The U.S. Solicitor's office expressed an opinion that went against the President's proclamation that the Tenakee land would belong to the blood descendants of the Tenakee land. The Solicitor stated "you can say anything you want to say to me, Congress can undo your opinion and make you like it."...which meant that Congress can take our land if it so wishes.

We have made several attempts to obtain relevant documents regarding the Tenakee Tribal lands to no avail. We have been informed by BIA that under the Freedom of Information Act, we have the right to file suit if our request is ignored. There is no stipulation as to how extensive the search has to be. We are aware that there is a deed. It was shown to us by a former BIA employee. Yet, we've been told that there are no documents. The same answer we received regarding the Executive Order, a copy of which is attached.

Tenakee is not listed under the Tlingit-Haida Court of Claims (Judgment Funds) nor is it a listed village under ANCSA.

As stated earlier, there are only three ways that trust land can be taken from the Indian Nation:

- An act of abandonment
- An act of conquest (war); or
- A specific act of Congress WITH the consent of the owner Clan.

ANCSA also went against the Presidential proclamation of 1935 claiming that the ANCSA settlement included all Executive Orders in the bargaining with their treaties.

No one, aside from Tribal descendants, can just arbitrarily negotiate the Tenakee trust land. The Solicitor's opinion was that all Executive Order land was lost when ANCSA was initiated including the 7179 land. It was gone without any of the blood descendants knowing about that transaction. The Department of the Interior is mandated to include

Page Three

the Realty Division on land transactions of this nature. Were they actually involved? If they were involved, did they look out for the best interests of the Tenakee Tribe?

Page Three

Executive Order 7179 land was never in the hands of the federal government. How can the State take the land from the federal government and arbitrarily give it up for sale when it never belonged to them in the first place. If our Congressional Delegation move from their homes in Alaska, does that give title to the State, thereby, allowing the land to be put up for sale? I think not! There is no difference except that this is Indian Trust Land.

We request that Tenakee land be withdrawn from the Governor's Lands Bill, HB 295 and SB 225. We are available to answer any questions that you may have.

John Martin, Sr.
Chairman
TENAKEE TRADITIONAL COUNCIL

Rob Earl

From: Kaci Schroeder
Sent: Monday, March 08, 2010 11:01 AM
To: Rob Earl
Subject: FW: Haines Lands Selection - HB 273
Attachments: HB 273 Haines Borough Land Selection Maps 3-7-10.pdf; HB 273 Haines Lands Selection description 3-7-10.doc

Here are the maps of the selections that we got from the Borough. When Haines formed a Borough they did not get all of their statutory lands and have worked with DNR to select lands that they could use towards their total land entitlement.

If you need anything more, please let me know. I have a grueling hearing this afternoon, but should be able to focus on this after that.

Kaci Schroeder Hotch
Legislative Aide to Rep. Thomas
State Capitol, Rm 501
Juneau, AK 99801
1-888-461-3732
(907) 465-3732
fax: (907) 465-2652

"In things pertaining to enthusiasm,
no man is sane who does not know how to be insane on proper occasions.
- Henry Ward Beecher

From: Mark Earnest [mailto:mearnest@haines.ak.us]
Sent: Sunday, March 07, 2010 2:00 PM
To: Rep. Bill Thomas
Cc: Kaci Schroeder; 'Steve Ritzinger'; 'Julie Cozzi'
Subject: Haines Lands Selection - HB 273

Dear Bill,

Attached are materials related to possible lands selections for Haines Borough via HB 273. There are maps for each of the proposed parcels, William Henry Bay property, Lynn Sisters property, Excursion Inlet properties, and Chilkoot Lake area. It should be noted that the first three properties are part of the University of Alaska lands selection within the Haines Borough, which are included in existing but separate legislation. Should the University land bill be amended to exclude these lands or not approved, these lands would then become available for the Borough. We do not have a good description nor do we know the status of the Chilkoot Lake lands. Bruce was unable to remotely access detailed maps from Talkeetna on Saturday when he called. These lands can be evaluated first thing Monday morning to determine their eligibility and possible acreage for selection.

Note: please disregard the last page of the pdf and instead use the word document.

Mark

STATE OF ALASKA/

FRANK MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
Division of Mining, Land and Water

550 West 7th Ave., Suite 1070
Anchorage, AK 99501
Telephone: (907) 269-8600

March 31, 2005

The Honorable Representative Bill Thomas
State Capitol, Room 428
Juneau, AK 99801-1182

Dear Representative Thomas:

Thank you for forwarding Mayor Wilson's letter that discussed the City of Tenakee Springs' concerns about the University Lands Bill, HB 130. I would like to take the opportunity to address her concerns.

US 2459: 17-acres near the Tenakee Springs Harbor

Mayor Wilson provides that she believes that a parcel of land near the Tenakee Springs Harbor has been dropped from the bill. That is incorrect. Rather, we have used another solution to solve the issue for the City.

Earlier this year, the Department had told the Tenakee Springs that it would not process a lease application for a 17-acre tract near the Tenakee Harbor pending the Legislature's consideration of HB 130 and possible conveyance of the tract to the University of Alaska. At your request, I told you and I told Mayor Wilson separately by phone that DNR would be happy to adjudicate the application before any conveyance to the University.

Thus, assuming that the City does apply for the lease, and assuming that after public notice and comment DNR finds that the lease is in the best interest of the state, Tenakee will have a long-term lease to the parcel. If so, that lease becomes a valid existing right and if the land is conveyed to the University, the University would become the owner of the property, subject to the City's lease. I do not believe that the University would be a less congenial lessor; and in any case the City's rights would remain protected under the lease.

I testified to this effect during the House Resources Committee hearing on March 2nd, and I have attached the legislative transcript from that testimony to this letter.

I am pleased that we were able to find a solution to this concern.

Letter to Representative Thomas

Page 2 of 4

3/31/05

Stipulation for Settlement of March 9, 1981

Mayor Wilson's letter provides a copy of a 1981 Stipulation for Settlement between the City and the State of Alaska. The settlement ended a lawsuit over Tenakee's municipal entitlement. I believe there is some confusion over the lands to which the settlement applies, and to the meaning of "retain in state ownership."

To what land does the Stipulation apply? The Stipulation of Settlement applies only to parcel C-34 in the Northern Southeast Area Plan. It does not apply to other lands proposed in HB 130.

HB 130 proposes to convey two parcels near Tenakee Springs to the University. The parcel nearest the Harbor includes parcels designated as C-31 and C-32 in the Northern Southeast Area Plan. The Stipulation of Settlement *does not* apply to these two parcels. It *does* apply to parcel C-30, as Mayor Wilson's letter indicates. However C-30 is not proposed for conveyance to the University.

HB 130 also proposed to convey what is designated as C-34 in the Northern Southeast Area Plan. The Stipulation of Settlement *does* apply to this parcel. The Stipulation of Settlement requires that the parcel will be retained by the state for "commercial, industrial, road right-of-way and borrow pit purposes."

Retained by the State. I would like to discuss the meaning of "retained by the state" in the context of the Stipulation of Settlement. While we have not completed a detailed review of the litigation that led up to the Stipulation, the court suit ended by this Stipulation was about Tenakee's municipal entitlement. The Stipulation provides that certain lands would be conveyed to the City and that certain lands would not be conveyed to the City and would instead be "retained by the state."

We note that it would be highly unusual, if not historically unique, for the Department to agree to retain a parcel of state land permanently in state ownership, absent an applicable directive from the legislature or a compelling constitutional imperative. Therefore, we believe that the phrase "retained by the state" communicates merely the proposition that the land simply would not be conveyed to Tenakee Springs as part of its municipal entitlement.

The settlement does not say or even imply that the state would never under any circumstances sell or transfer those lands. If that had been the intent, the Stipulation would almost certainly have outlined a process for doing so, as is characteristic of these types of Stipulations. Its purpose of the Stipulation was to settle the municipal conveyance question that was in litigation. Thus, after brief consultation with the Department of Law, we believe that the Stipulation of Settlement does not bind DNR from disposing of title.

However, even if, after further review, we find the above interpretation to be in error, and the lands must retained by *the state*, the University is an agency of the state. Conveying land to the University of Alaska does not convey it out of state ownership. It is solely a transfer between agencies of the state, and is therefore not barred by the Stipulation of Settlement.

Letter to Representative Thomas
Page 3 of 4
3/31/05

Management Purposes. We believe the provision in the paragraph 1.2 of the Stipulation settlement reflects the proposition that at the time of settlement the Department had the intention to continue existing uses of the parcel for the removal of reasonable amounts of material under reasonable conditions while the land remains in state ownership. However, we do not read the stipulation as a categorical commitment to permanently make those uses available even in the event that such uses become, for example, unreasonable when viewed together with the Department's obligation to manage these lands for other competing purposes, or a legislative determination to convey them to the University of Alaska. To the extent we are incorrect on this score, the University, of course, would be bound to permit the specified reasonable uses under its management.

Further, the management purposes outlined in the Stipulation of Settlement for parcel C-34 — “Commercial, industrial, road right-of-way and borrow pits” — are development purposes appropriate for University ownership and management. Should further review confirm that the state may not dispose of its title, the Stipulation of Settlement is a valid existing right that the University must respect. But these uses are appropriate for University management.

Summary. In summary, the Stipulation of Settlement provided by the City of Tenakee does not apply to the parcel proposed for transfer near the boat harbor, and does not restrict the legislature's ability to convey the remaining parcel, C-34, to University management. In fact, the purposes outlined in the Stipulation of Settlement are appropriate for University ownership and management.

Thank you for this opportunity to review the concerns. Please let me know if you have additional questions,

Sincerely,

Bob Loeffler
Director

cc: Senator Al Kookesh
Representative Mike Chenault
Representative Bruce Weyhrauch
Mayor Shelly Wilson, City of Tenakee Springs
Ed Collazzi, DNR
Janet Burleson Baxter, DNR