



THE STATE
of **ALASKA**
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The Honorable Representative Wilson
Chair, House Transportation Committee
Alaska State Capitol, Room 406
Juneau, Alaska 99801

Dear Representative Wilson:

In response to questions pertaining to HB 371 posed by the House Transportation Committee members on March 11, 2014, the following information is provided:

- **How will the Department of Transportation & Public Facilities (DOT&PF) protect the interest of the private sector using material sites?**

Section 13 exempts DOT&PF from the Department of Natural Resources' (DNR) requirements for materials sales contracts; however, it does not limit DNR's authority to sell materials to the private sector.

Private contractors working under a DOT&PF construction contract will be able to submit lower bids, since they will no longer have to pay DNR for state-owned materials. The reduced costs to the private contractors will be shared equally as each of the bidders can be assured of equal access to state-owned materials sites.

Impacts to privately owned materials sites should be negligible because material hauling distances have the greatest effects on contractor's cost of materials. When faced with a choice of purchasing materials from a site that is located near a project, or hauling free materials to a project location, a contractor will likely choose to reduce its overall costs by reducing its hauling distances.

- **Would DNR have first right of refusal on land disposals by DOT&PF?**

No. DOT&PF's current disposal authority (at AS 19.05.070(a)) provides preference right to the adjacent property owners for disposals of less-than-marketable sized remnant parcels. When a marketable sized parcel becomes excess, DNR is notified of the available parcel, and that parcel will be transferred to DNR at DNR's request.

Under DOT&PF's current and amended AS 19.05.070(b), and existing regulation (17 AAC 10.110), DOT&PF may competitively sell a marketable-sized parcel of excess property if the parcel is not accepted by another public agency or purchased by the adjoining land owner.

- **Should there be flexibility allowing the commissioner of DOT&PF to determine how to dispose of land acquired through condemnation?**

Section 10 of the bill is designed to allow the DOT&PF commissioner the same degree of discretion in the disposal of public facility land acquired through condemnation as the commissioner currently has with regard to disposal of excess transportation properties. The current AS 35.20.070 requires title to public facility land acquired through condemnation to be returned to the person, heirs, or assigns who formerly owned the property. Because of the mobile nature of people today, AS 35's "heirs or assigns" rule has unintended consequences; as an example: For many years the Council of Athabascan Tribal Governments (CATG) operated a community health services clinic out of a DOT&PF-owned building. The CATG desired to own the land and building; the state had an equal desire to dispose of the property to the tribal government entity. Even though fair market value was paid by DOT&PF to the former land owner when the state acquired the property—and DOT&PF owns the parcel free and clear—under AS 35.20.070 DOT&PF could not dispose of this property to the tribal entity for a beneficial public use because the entity is not an heir or an assign of the original owner. In this Fort Yukon situation, the heirs and assigns could not be located and in order to allow the tribe to continue using the facility as a health clinic DOT&PF had to continue to hold the property--a result neither the tribal government nor DOT&PF wanted.

By aligning Title 35's disposal authority with DOT&PF's Title 02 and Title 19 disposal authorities, the adjoining land owner has a preference right to the disposal of a remnant property; the adjoining land owner is the likely former owner or the success in interest to the former owner. For all practical purposes, the adjoining land owner is a more appropriate recipient of formerly condemned land.

- **Could DOT&PF lease land from the Alaska Railroad Corporation (ARRC), rather than ARRC selling land to DOT&PF?**

The short answer is that while leasing land from ARRC may benefit their bottom line, it would not represent a good long range policy for the management, operation and funding of DOT&PF facilities. Our federal funding agencies require that any lease for a federal aid facility provide at least a 20-year term (Federal Aviation Administration) or for the design life of the project (Federal Highway Administration). Unless the state can prioritize and design another federal-aid project at the end of each lease term, lease extensions would have to be negotiated and secured at the end of each lease term using state funds. Here are examples of ARRC land being incorporated into DOT&PF projects using the two acquisition vehicles:

- Highway Example: DOT&PF acquired a fee interest in Alaska Railroad land for the recently completed Illinois Street project in Fairbanks. ARRC was compensated almost \$1.4 million for a fee interest in their property. Almost \$800,000 was paid for fee title to the existing Illinois Street and adjoining streets that had been in public use for almost 100 years within the railroad right-of-way. There is little expectation that public use will cease in the next 100 years.
- Airport Example: DOT&PF currently leases land for most of the Healy River airport from the Alaska Railroad in a 30 year lease that terminates in 2017. In 2010 the appraised value for fee title was \$320,000 and we expect the negotiated compensation for the 30-year leasehold interest to be

higher. As state funds have not been available to extend the lease, we are attempting to establish a federal aid project prior to the end of the lease term. Leasing in general requires a continuing administrative burden to comply with the terms of the lease. Such terms include obtaining approval from ARRC for any work on the state facility costing more than \$50,000.

When transfer of title for a portion of ARRC property is necessary for a DOT&PF project, ARRC suffers negligible operational impacts. ARRC's operations are fully permissible within a DOT managed facility.

- **How much time will be saved by DOT&PF with this legislation?**

DOT&PF can say with absolute certainty that acquisition and disposal of public domain lands consumes far more time and energy as compared to other public or private properties. This bill could cut years to decades off the time it takes an adjoining property holder to receive remnant properties after DOT&PF completes a construction project. The bill will also reduce by months to a year the processing time to incorporate public domain land into a DOT&PF construction project. Additionally, by separating the currently duplicative authorities the bill will save countless staff hours currently spent by both agencies processing interagency property transfers.

- Land Disposals: DOT&PF can typically complete an excess property disposal of its lands in six to ten months, including preparation of a title report, appraisal, public notice, agency review, preparation of a decisional document and execution of conveyance documents. Currently, DOT&PF must allow DNR to dispose of excess former public domain land, which takes years to decades to complete under the current statutes. The combination of primary authority for the surface estate in Sections 1, 6 & 9 and the uniform disposal language under Sections 2, 4 & 10 will allow DOT&PF to efficiently close out its projects by disposing the former public domain land, which proves difficult or impossible under DNR authorities.
- Land Acquisition/Material Sales: Acquisition of necessary public domain land usually takes all the available time between DOT&PF's submittal of preliminary right-of-way drawings to DNR until DOT&PF's bidding documents are ready to be issued—regularly several months to a couple of years. With enough effort by DOT&PF, DNR will deliver rights to the necessary property prior to the state signing a contract for construction. Backlogs for processing applications for material sales contracts with DNR consume nearly the same amount of time, and DNR authorizations are usually delivered just prior to DOT&PF issuing construction contracts. The current bill proposes a 4 month limit for DNR to transfer title for airport, highway and public facility properties. Access to material sites would require coordination with DNR but little administrative processing.
- Legislative approval for fee conveyance of ARRC land: Our experience suggests that this provision could remove 1 to 2 years from the project development process.

- **DOT&PF has the ability to dispose of land, would DOT&PF take in revenue from the land sale?**

The proposed amendments to DOT&PF disposal authorities (Section 2-airports; Section 4-highways; and Section 10-public facilities) do not modify the state and federal statutes and regulations that govern the use of proceeds from the disposal of excess property from the state's infrastructure. DOT&PF is authorized to receive the proceeds for disposal of excess property, but its authority to spend those proceeds is very limited by state and federal laws.

In rough summary: Proceeds from the disposal of airport property must be used for the improvement, maintenance, or operation of the airport where land was disposed. If the disposal of an excess highway property occurs in the context of highway construction, the proceeds are incorporated into the highway project; otherwise the proceeds must be used for activities eligible for federal highway fund participation. Proceeds from the sale of excess public facility properties, and from properties that have never used federal funds, are used for expenses related to overhead for the sale of the property and management of properties through our receive and expend authority. Any funds leftover at the end of the year are returned to the general fund.

- **Land condemnations – if land is not used, would it be offered first to the person who originally owned the land?**

No. DOT&PF's current disposal authorities for its transportation properties provide a preference right to the adjacent property owners for disposals of less-than-marketable sized remnant parcels. The adjacent property owner is often the person who the land was condemned from, but could also be the successor in interest. The adjoining property owner is often the only feasible developer of less than marketable sized remnant properties.

DOT&PF's current disposal authority for public facility properties (AS 35.20.070) contains a preference right for the "person, heir, successors, or assigns" that had the property condemned. Section 10 of the bill would eliminate the condemnee preference and would align this disposal authority with DOT&PF's authorities to dispose excess transportation properties, as the condemnee preference functions as a restraint on alienation. The example relating to the community health services building operated by the Council of Athabascan Tribal Governments would also apply here.

If you or your committee members have any further questions, please feel free to contact me at 465-3906.

Sincerely,



K. Kim Rice
Deputy Commissioner