Julie Smith
P.O. Box 81
Ester, Alaska 99725
907-479-8144
jsmith@mosquitonet.com

Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resources Committee

Sent via email

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Honorable Senators and Representatives,

I am writing to provide written comments in response to Senate Bill 211 and House Bill 371, relating to state land and materials. To provide a bit of context for my comments, I would first like to let you know that I have been a resident of the State of Alaska for over thirty years. During this time I have served the Fairbanks community as an attorney, mediator, non-profit director, and university administrator. I currently work as a Natural Resource Specialist for the Department of Natural Resources (DNR) in Fairbanks. These comments are offered in my capacity as a private citizen and resident of the State of Alaska.

I have listened to the committee hearings that have been held so far. I was grateful to hear legislators asking questions about the bill. I also appreciated hearing the testimony of Dick Mylius and then later reading the written testimony of Chris Milles. As I started jotting down my concerns related to SB 211[1], what emerged was a list of questions. I will provide that list at the end of my comments, but first I would like to summarize my understanding of parts of the bill and outline the resulting constitutional questions that concern me.

SB 211 will result in a dramatic change in the ownership and management of thousands of acres of state land.[2] SB 211 requires that in less than a year's time, DNR will transfer title of thousands of acres of public domain land to the Department of Transportation (DOT). This fact raises the question of whether a change in ownership and management of public domain land from DNR to DOT is in the best interest of the state. A second question is how the transfer of ownership from DNR to DOT would be accomplished. That is, if the legislature decides DOT should own and manage these thousands of acres of public domain land, what is the process that will be used for conveying title from DNR to DOT? This second question is the one I am focusing on here.

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[1] For ease of reference, I will refer to both bills as SB 211. My comments include HB 371.

[2] SB 211 does not specify how many acres would pass from DNR to DOT under the bill, but DOT uses hundreds of material sites on state land ranging in size from several acres to 500 acres, and this is only a fraction of the land included in the bill. For this reason, I assume thousands of acres of land would pass from DNR to DOT under SB 211.

When DNR conveys title to state land it is bound by the Natural Resources section of the Alaska Constitution, including the Public Notice provision located in Article 8, Section 10 of the Alaska Constitution, which provides as follows:

> Public Notice. No disposals or leases of state lands, or interest therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

The Alaska Constitution requires that before a disposal of state land, there must be prior public notice. Historically, conveyance of title from DNR to any other entity has been defined as a disposal of state land requiring public notice. But SB 211 creates a new definition of "disposal"[3] and uses that new definition to require DNR to convey title of state land to DOT without public notice and without an opportunity for DNR or any other state agency to respond to DOT's current or future requests for ownership of public domain land. SB 211 thus creates a new and unprecedented approach for determining land ownership and management in Alaska. Since the new approach does not adhere to the public notice protections required by the Alaska Constitution, I wonder whether it is constitutional.

A related provision of SB 211 is equally confusing. That provision specifically grants DOT the authority to dispose of the land it receives title to under the bill "according to terms, standards, and conditions established by the commissioner."[4] This part of the bill acknowledges a disposal is taking place, but is silent regarding the requirement for public notice. In effect, SB 211 requires DNR to convey title to DOT without public notice, and then allows DOT to convey title to any person or entity without the standard of public notice required by the Alaska Constitution.[5]

A third question is whether it is constitutional for DOT to act in the capacity of the Alaska State Legislature in the administration of state public domain land. Article 8, Section 6 of the Alaska Constitution provides as follows:

> State Public Domain. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain. (Emphasis added.)

SB 211 gives DOT the authority to unilaterally grant itself ownership of significant parts of the state public domain.[6] Is the authority to unilaterally determine ownership of the state public domain a legislative authority? If so, is it constitutional to grant that legislative authority to DOT?

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[3] SB 211 states "the transfer of land or materials under this subsection is not a disposal of state land."

[4] See SB 211, Sections 2, 4, and 10. Also see Section 12 and the Sectional Analysis for Section 12.

[5] The public notice standard required for disposals of state land is codified in 38.05.945 and other provisions in AS 38.05. This section of the Alaska Statutes is known as The Alaska Land Act, and was enacted in 1959 in accordance with the public notice requirement of the Alaska Constitution.

[6] See SB 211, Sections 3, 5 and 8.

In addition to the constitutional questions noted above, I have a number of other questions related to SB 211. They are as follows:

1. What actual land is included in SB 211? Is there a list of parcels or a map showing the land that is included in the bill? How many parcels are involved? How many acres?

2. What parcels of land included in SB 211 are not currently surveyed? What is DOT's plan for surveying these parcels? What is the expected cost for these surveys?

3. SB 211 requires completion of surveys after title has been conveyed to DOT. Is there any precedent in Alaska for conveying title without a survey already in place? What are the foreseeable issues related to clouded title and uncertainty of land ownership and management?

4. The last paragraph of Section 5 of SB 211 states: "within two years after the completion of construction or the opening of a materials site, the department shall prepare and record a record of survey of the property received by the department." Note that "completion of construction" may take decades to accomplish for material sites. What timeline will DOT be required to follow to obtain surveys for its many unsurveyed material sites?

5. How will SB 211 impact funding for DNR and DOT? Would DNR lose funding from loss of material sale revenue as a result of this bill? Would DOT gain a new funding source from selling material from material sites? Section 13 of the bill states DNR would no longer charge DOT for material. Does "DOT" include DOT contractors? Would DOT start charging their contractors or others for material from state material sites? If so, where would those funds go?

6. SB 211 indicates DOT will provide public notice under AS 44.62.175 when it requests title of state land from DNR. How does the public notice DOT would provide differ from the public notice DNR is required to provide for a conveyance under AS 38.05.945?

7. DNR manages for multiple uses of state land. Will DOT manage state public domain land for multiple uses? If so, what legal authority and processes does DOT have in place for multiple use management? How will DOT's management of state public domain land be different from DNR management?

8. Testimony from DOT indicated SB 211 was modeled after a federal law. What law in particular is it modeled after? Does the federal version of the law provide opportunities for other agencies to respond to DOT's request for title to land? What level of public notice and involvement is provided under the federal version of the law?

These are the questions that come up for me related to SB 211. I appreciate the opportunity to participate as a private citizen in the legislative process. Thank you for your time and attention.

Sincerely,

Julie Smith