March 11, 2014

The Honorable Senator Dennis Egan
Chairman, Senate Transportation Committee
State Capitol
Juneau, Alaska 99801

RE: SB 211 - Additional comments and written version of oral testimony

Dear Senator Egan:

Attached for the Senate Transportation Committee is a copy of my oral testimony on Senate Bill 211 that I presented at the Tuesday, March 10 meeting of the Senate Transportation Committee.

I would also like to offer the following supplemental comments, primarily in response to comments made by DOT and Department of Law in response to my testimony.

Regarding the wording "subject to valid existing rights" in sections 3 (page 2, line 29-30), Section 5 (page 4, lines 29-30) and Section 8 (page 5, lines10-11), this language would not protect municipal land selections or other conflicting requests for the land. As I previously noted, under SB 211 DNR is not given the option to reject a DOT request. If the land is conveyed to DOT, it is no longer available for transfer to a municipality under a municipal entitlement selection. Also, sites such as gravel pits, may have been requested for other public uses by state agencies, these requests would be rendered moot once DOT applies for this land. The DOT use (a gravel pit) may also not be the economically most valuable use of the land. Again, under SB 211, DNR doesn't have the ability to deny the DOT request even if there is a higher and better use of that land, such as land needed by a school district for a public school. The only valid existing uses protected by the current language would be any permits, leases or ROWs that DNR had allowed prior to the DOT request.

Regarding the Reciprocal Agreements in Section 16, Mr. Lynch is correct that the DNR and USFS agreed that existing state law provided adequate public access. Hence, for a number of sites on map 92337, no easements were necessary or issued. However, the language in Section 16, line 15-17, clearly states that "... the easements over submerged lands identified on the map numbered 92337 .... *are granted* to the United States Forest Service" (emphasis added). It does not say some of the easements, or only those that DNR has already granted, it says all of the ones on the map.

A final issue that I did not raise in my testimony regards Section 13. Section 13 appears to grant to DOTPF carte blanche to take gravel from any gravel pit on state land, with DNR unable to "otherwise restrict", or maybe more correctly, it should

read "in any way restrict" what gravel or how much. This section raises at least two major concerns. First, many gravel pits on state land are developed by and the gravel sold to private developers, municipalities, other state agencies, federal agencies or others. For example, most gravel pits on the North Slope were developed specifically by the oil industry or various contractors, and this new AS 38.05.030 would allow DOTPF to take whatever it wants out of these pits and offers no protection for the gravel that may already have been sold by DNR to a private party. DNR cannot, under this provision, protect the rights of the holder of a valid pre-existing gravel sale.

My second concern with Section 13 is that it gives DOTPF this carte blanche authority on all "state land", not just "state public domain" land as was used elsewhere in the bill. "State land" includes land set aside as State Parks, State Wildlife Refuges and other legislatively protected lands. This wording is not consistent with the introductory remarks made at Tuesday's hearing where the committee was assured that the bill only applies to "state public domain" land.

Again, I thank the committee for the opportunity to testify at the Senate Transportation Committee hearing and hope the Committee gives serious consideration to these concerns.

Sincerely,

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cc: Sean Lynch, Department of Law
John Bennett, DOTPF
Ed Fogels, DNR

Testimony of Dick Mylius to Senate Transportation Committee on SB 211
March 10, 2014

Good Afternoon,

My name is Dick Mylius, speaking as a private citizen. I have lived in Anchorage for 34 years.

I urge the committee to either reject, or significantly revise, Senate Bill 211 as this legislation does not protect the public interest in state lands, and one section, Section 16, is either vague or unconstitutional.

For background, I am currently mostly retired, but worked at the Department of Natural Resources, Division of Mining, Land and Water for 29 years where I dealt with issues in this bill.

I agree that state land should be used, whenever possible, to meet the transportation and facility needs of Alaskans. I also agree that the process to transfer state land from DNR to DOT is at times cumbersome. I am also aware that DOT is sometimes troubled by decisions made regarding land it desires and the conditions that DNR may attach to the land. However, this legislation removes any discretionary ability by DNR to address public concerns, competing resource interests, or even valid claims by other parties to the land in question.

The bill says "what DOT wants, DOT gets". The bill requires that if DOT asks the Commissioner of DNR to transfer a parcel of state land for an airport, road, gravel pit, or other use, DNR will transfer the land within 4 months. Section 3 for airports, Section 5 for highways, Section 8 for public facilities all say that DNR "shall" transfer these lands. These sections also require DNR to transfer any gravel or other materials on state land DOT requests for the transportation or public facility.

Why is this a problem? It is a problem because state land isn't just for transportation uses, and sometimes sites selected by DOT have prior competing land claims or public interests.

I'll touch on the issue of prior competing lands claims first. In the North Slope Borough, DOT has existing and future interest in gravel pits and the two airstrips at Happy Valley and Franklin Bluffs (specifically mentioned in Section 15 of SB 211). I did not have time to check state land records, but I believe that these lands are still selected by the North Slope Borough as part of its municipal land entitlements from the state. This legislation directs DNR to transfer these parcels to DOT. Even if the intent of DNR or the legislature is to reject the municipal selections of these lands, four months is not adequate time for DNR to issue a decision rejecting the Borough's selections, allow for the statutorily required public notice and comment, and resolve likely appeals from a municipal government.

The state has obligations to fulfill municipal entitlements of other municipalities as well, including a longstanding agreement with the Municipality of Anchorage regarding the Municipality's possible future rights to certain parcels, including parcels adjacent to Anchorage International Airport.

In addition to overriding DNR's ability to protect or at least adjudicate competing interests in the land, the bill would not allow DNR to address conflicts with adjoining uses or access concerns. Under the existing process, DNR looks at adjacent land uses and access concerns prior to transferring land to DOT. This bill would eliminate this process. For example, DOT applied to DNR for a gravel pit at Coldfoot that was adjacent to residential properties. DNR worked with DOT to either find a better site, or require DOT to retain buffers and restrict hours of use for the site. DOT was not particularly receptive to these concerns.

Under the existing process, DNR can reserve easements for public use through DOT sites to ensure that access is not blocked by public facilities. DNR can also condition a transfer to DOT with a requirement to provide alternative access. Again, under SB 211 DNR could not attach such conditions to the land transfer. Public access would be lost.

Section 16 of SB 211 requires special attention by the Committee. The reciprocal easements referred to stem from a little known provision in federal legislation passed in 2005 known as SAFETEA-LU. The language in the federal law and Section 16 of SB 211 refer to map 92337. The map shows approximately 135 public access and log transfer sites on state tidelands that were to be transferred to the US Forest Service in return for a number of transportation and utility corridor easements across Tongass National Forest land. Several years ago, DNR, DOT and the USFS agreed on a public process to establish the easements. To date, according to DNR, 66 sites have approved easements but another 67 do not. Many of the easements already processed were existing USFS facilities with permits. I believe that many of the remaining sites do not have any existing facilities and some are important public access sites that should remain in state, not USFS, ownership. Also, the process required the Forest Service to submit an actual application to DNR to better define the exact area they wanted (Map 92337 is just dots on a map of SE) and I believe they have not applied to DNR for the 67 unprocessed sites.

Regardless of whether or not they should be transferred, the legislation (page 8, lines 13-17) appears to transfer easements on these remaining 67 sites to the US Forest Service without the required public notice required by Article VIII, Section 10 of the Constitution.

Finally, regarding the bill generally – the legislation has two zero fiscal notes. It is hard to believe that there is no cost to issue these envisioned land transfers such as the easements under Section 16 or for any of the other land transfers envisioned by this bill (the bill has a zero fiscal note from DNR and DOT). As you know, DNR has been trying to reduce its backlog of work; this adds a bunch of work to DNR with no additional resources to address the added workload.

Thank you for the opportunity to testify today.