March 12, 2014

House Transportation Committee
c/o The Honorable Peggy Wilson, Chair
State Capitol
Juneau, Alaska 99801

RE: Comments on House Bill 371 – State Land and Materials

Dear Members of the House Transportation Committee:

I would like to offer comments on House Bill 371. I was unable to testify at the March 11 House Transportation Committee hearing on House Bill 371 as it conflicted with the Senate Transportation Committee hearing on the Senate's companion legislation (SB 211) where I did testify.

I urge the committee to either reject, or significantly revise, House Bill 371 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. These comments represent my personal views but are based on first hand knowledge of these issues.

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 protect valid existing legally binding gravel sale contracts, protect valid claims by other parties to the land in question, address public concerns, or accommodate competing land and resource interests.

The bill essentially 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 "<u>shall</u>" transfer these lands. DNR cannot say no. 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, in fact the Constitution directs otherwise. Sometimes sites selected by DOT have prior competing land claims, higher and better uses, or public interests. My comments address six key points as described following.

1. Section 13 of HB 371 allows DOTPF to extract gravel from any existing gravel pit on state land even if the site was developed by another party for a different purpose and with no protection for existing, valid state gravel sales. Section 13 gives DOT 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 DOT to take whatever it wants out of these pits and offers no protection for rights to 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. DOT may tell you this is not their intent with section 13, then you should ask why this provision is in the bill and where in Section 13 these concerns are addressed. Note that Section 13 is not tied to the transfer of land to DOT and is not subject to the "valid existing rights" language found elsewhere in the bill.

A second concern with Section 13 is that it gives DOT 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 Senate hearing where the committee was assured that the bill only applies to "state public domain" land.

2. Prior Competing Land Claims. As the state's multiple use land manager, DNR has requests for state land from many parties and in some cases, outright obligations to parties such as municipal entitlements under AS 29.65.

DOTPF will tell you (as they testified in Senate Transportation) that the wording "subject to valid existing rights" in sections 3 (page 3, lines 3-4), Section 5 (page 4, lines 3-4) and Section 8 (page 5, lines15-16) protects competing land claims. It does not protect municipal land selections or other conflicting requests for the land. As I previously noted, under HB 371 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. Furthermore, state land, such as potential gravel pits, may have been requested for other public uses by state agencies, these requests would be rendered moot once DOT applies for and automatically receives this land. The DOT use (such as a gravel pit) may also not be the economically most valuable use of the land. Again, under HB 371, 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.

In the North Slope Borough specifically, DOT has existing and future interest in certain gravel pits and the two airstrips at Happy Valley and Franklin Bluffs. Section 15 of HB 371 specifically directs DNR to transfer the two airstrips and adjacent lands to DOT. I believe that these lands are still selected by the North Slope Borough as part of its municipal land entitlements from the state. If the intent of the legislature is to reject the municipal selections of these lands, it should state so in this legislation and notify the North Slope Borough in advance.

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. Future land transfer request from DOT could be in conflict with this longstanding agreement and the legislation takes away does DNR's ability to address these issues.

3. Public concerns regarding DOT's proposed use, access issues and conflicts with adjacent landowners and users. DNR is required to consider all potential uses when determining the best use for a parcel of state land. This bill would not allow DNR to address conflicts with adjoining uses, competing and perhaps higher and better uses of the land, or access concerns. Under the existing process, DNR looks at adjacent land uses, competing requests and 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 HB 371 DNR could not attach such conditions to the land transfer. Public access would be lost.

4. Reciprocal Easements Provision. Section 16 of HB 371 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 HB 371 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 (USFS) 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, management. 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 easements should be granted to all 135 sites, the legislation (page 8, lines 19-22) appears to grant easements to the US Forest Service on the 67 sites that do not currently have easements without providing public notice as required by Article VIII, Section 10 of the Constitution.

5. Fiscal Impact. 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.

6. Lack of Notice to affected parties. When DOT was asked at the Senate Transportation Committee if the North Slope Borough, whose municipal land entitlement is directly impacted by this legislation, had been consulted in drafting this legislation or informed that it exists, the answer was "no". This bill also potentially impacts the rights of any private or public entities that hold an existing gravel sale on state land, including North Slope oil field operators. I do not believe they are aware of this legislation and how it could impact them. The bill will also impact existing private owners of gravel resources as they will be at a competitive disadvantage compared to the DOT owned pits. Based on the limited amount of testimony on March 11, I doubt that these parties are aware of this legislation.

I thank the committee for the considering these concerns.

Sincerely,

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