



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
Fax: 907.586.8365
dot.state.ak.us

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The Honorable Senator Egan
Chair, Senate Transportation Committee
Alaska State Capitol, Room 9
Juneau, Alaska 99801

Dear Senator Egan:

In response to questions pertaining to SB 211 posed by the Senate Transportation Standing Committee members on March 11, 2014, the following information is provided:

- **Where is the public process if the Department of Natural Resources (DNR) transfers land to the Department of Transportation and Public Facilities (DOT&PF)?**

The public process for incorporating public domain land in the construction or repair of the state's infrastructure begins with communities and municipalities expressing the need for new or upgraded facilities. Communities and municipalities advocate through the legislative process for state funding to pay for needed construction or maintenance. It is only after this lengthy public process, resulting in a project being included in a capital budget appropriation, DOT&PF begins its years long public processes that results in defined right-of-way property needed for inclusion in a project.

DOT&PF's project development processes result in significant public input and consideration on two different fronts: overall project design and permitting the proposed project through environmental and resource agencies (including the divisions of DNR). The many year processes for designing and permitting a public infrastructure project allow far greater opportunities for public input as compared to a private application for the use of public domain land. In a process that addresses the public's concerns and avoids or minimizes potential effects to the environment and natural resources, the "footprint" of a DOT&PF project is firmly established through the creation of state and federal permit conditions. It is only after DOT&PF has received all of its state and federal permit conditions that it seeks the necessary public domain land for construction. Attached is a project development summary highlighting public involvement processes.

Under current law, DNR must review DOT&PF's application for public domain land under its Alaska Land Act processes in the same manner as it would review any private entity seeking to develop state land. The Alaska Land Act review for the "disposal" of state land at the end of these multi-year processes is unnecessary and duplicative of the public and permitting agency review done in the development of the project. Because the public and agency processes to develop a project have already established a footprint providing the greatest benefit for the least impact, DNR has never denied a DOT&PF request for public domain land to be incorporated into an infrastructure project.

"Keep Alaska Moving through service and infrastructure."

- **Currently DNR considers the interest of adjacent landowners and is able to attach conditions to land that it transfers to DOT&PF. Does this legislation provide any consideration?**

This bill does not reduce any public processes or permit requirements that result in permit conditions on a DOT&PF project to protect neighboring properties and the public in general. In place of the Alaska Land Act review for a disposal of state land, the bill creates a new public process (Sections 3, 5, and 8) whereby DOT&PF presents to DNR and the public a written determination explaining its reasonable need for a specific portion of public domain land, with property plans identifying the exact parameters of the public domain land intended for transfer. The public and DNR may submit comments to DOT&PF on its determination of “reasonable necessity” and DOT&PF may alter its request upon those comments. In the end, however, the project footprint is determined by DOT&PF for the construction of the project, and the activities within that footprint are limited by permit conditions and local, state, and federal laws.

- **Is Section 16 unconstitutional?**

The concern expressed in public testimony was that Section 16 would require DNR to immediately issue easements to the U.S. Forest Service—without an opportunity for public comment—which would violate the requirements of Alaska’s Constitution. Section 16 recognizes the exchange of easements between the federal and state governments, and authorizes the commissioner of DNR to waive the 55-year limitation upon a determination that a longer term is in the best interest of the state.

As was stated in public testimony, in 2006 the state and federal governments entered into a memorandum of understanding (attached) that provides a process for DNR’s consideration of US Forest Service development plans for the identified properties, and that requires the issuance of site-specific easements. DNR only issues individual easements upon review of U.S. Forest Service development plans and easement diagrams (MOU Section E, at pages 3-5), and after issuing state best interest findings and providing public notice (MOU paragraph E.3, at page 5). Thus, Section 16 of the bill does not waive public notice requirements nor does it cause or contemplate a violation of the Alaska Constitution.

- **How would competing claims for land be handled (North Slope Borough selections)?**

Under AS 29.65.020, municipalities are entitled to receive a certain amount of general grant land that is “vacant, unappropriated, and unreserved.” Because of this restriction, state transportation infrastructure is not normally available for municipal selection. We have attached the relevant portion of DNR’s land classification decision for Happy Valley, which better explains DNR’s analysis for the setting boundaries on lands available for municipal selection. We have also attached letters of support from former legislators and administrations requesting that DNR retain the Happy Valley transportation facilities under state ownership and control.

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