



March 31, 2014

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

Dear Senator Egan:

In response to the March 25, 2014 hearing of Senate Bill 211 by the Senate Transportation Standing Committee members, questions and concerns were presented by John Bitney representing the North Slope Borough (NSB), Julie Smith and Lisa Weissler. The following answers are in response to these public comments:

North Slope Borough comments:

- **North Slope Borough's primary concern was Section 15 of the bill, authorizing the transfer of Happy Valley and Franklin Bluffs on the Dalton Highway from the Department of Natural Resources (DNR) to the Department of Transportation (DOT&PF) on the Dalton Highway.**

The Department is proposing removing section 15 from the bill. The Department is not abandoning its pursuit of the property to be transferred to DOT&PF as appurtenances to the Dalton Highway and to fulfill our mission of providing public transportation and infrastructure. These facilities are critical to our continued maintenance and operations of the haul road and to provide general service aviation operators alternative airports when Deadhorse is not available. DOT&PF will continue to work with DNR and NSB on the land selections.

Julie Smith's comments:

As Ms. Smith explained in her testimony, this is the third set of comments that she has provided to the committee and so the Department refers to our response dated March 18, 2014 for similar questions. ([SB211_milius,milles,smith_response3-18-14.pdf](#)). Our reply to new questions and further clarifications is below:

- **Sections 3, 5, and 8 of the bill require surveys and title transfers of the hundreds of parcels of state land involved in airports, highways, public facilities and material sites included in the bill. What is the expected cost for obtaining these surveys and conveyances of title?**

Sections 3, 5 and 8 relate to the transfer of state owned public domain land to DOT&PF for future public projects. The cost to survey the exact parcel(s) to be incorporated into a state infrastructure project is a component of the capital cost of the project. As they are future projects with undefined right-of-way needs,

no estimate for the cost of surveys can be provided at this time. As the land transfers will be necessary for either capital improvement or maintenance projects, the funds required for surveys of the new right-of-way will be provided by the federal or state project funds in the same manner as project surveys are currently funded.

- **Section 13 changes the fiscal management of material sales in Alaska so that DNR would no longer charge DOT&PF or DOT&PF contractors for material. How much money is involved? Where will the money go that is no longer paid to DNR? Will DOT&PF simply keep these funds in its own budget? If so, is DOT&PF required to provide an accounting of how SB 211 shifts funding from DNR and the State General Fund to DOT&PF? If there is some other fiscal impact that will result from SB 211, what is it? What is the fiscal impact of SB 211?**

Under the current system, DOT&PF pays DNR \$0.50 per cubic yard for the extraction of material from a state-owned site if it is used on a DOT&PF project (most often these are sites opened and managed by DOT&PF). Under the proposed system, no money would be paid from DOT&PF's capital improvement project appropriation to DNR's general fund operating account for material sales. As the material quantities for projects vary and as there are a multitude of other unrelated bid items on a project and as a contractor may elect to use other than state-owned sites, it would be very difficult to estimate the overall reduction in DOT&PF project costs. However, because of this bill, DOT&PF expects overall efficiencies and a savings by waiving the fees and contracting process for state supplied materials. DOT&PF and DNR each expect to see reduced administrative costs--and reassignment of staff to better tasks--when DOT&PF-DNR material sales contracts become no longer necessary.

Again, DOT&PF will continue to track material quantities extracted from a material site and placed on the project. DOT&PF and DNR have submitted a zero fiscal note to this bill because both agencies expect to reduce the administrative burden and associated agency costs in the transfer of lands and materials from DNR to DOT&PF. The zero fiscal note also applies to survey requirements, as current DOT&PF properties do not need to be surveyed to implement the provisions of the bill, and the cost of surveying state land or resources needed for future DOT&PF construction or maintenance projects will continue to be included in DOT&PF project funding.

Lisa Weissler's comments:

Before responding to each specific comment in Lisa Weissler's written testimony from March 24, 2014, DOT&PF must reiterate that the proposed amendments are designed to address the overlapping land management authorities of DOT&PF and DNR. DOT&PF is fully authorized under Titles 02, 19, and 35 to independently acquire, manage and dispose property in accordance with its government purpose mission to keep the state's transportation and public infrastructure operational. Because DOT&PF is a state agency, the land it holds and manages for its transportation and public facility properties is state land. DNR is likewise fully authorized under Title 38 to acquire, manage, and dispose state land in accordance with its multiple use mission to conserve and develop the state's natural resources. These overlapping authorities, and differing missions, result in land management paralysis situations that negatively affect neighboring property owners and the delivery of services to the public from both state agencies.

- **AS 38.05.030 has been in place since statehood. Returning state land to DNR ensures the land is managed or disposed of in a way that meets state constitutional requirements.**

AS 38.05.030 currently exempts DOT&PF's land management—including land acquisitions and disposals—from the requirements of the Alaska Land Act. This is a necessary provision as DOT&PF is fully authorized

under Titles 02, 19, and 35 to independently acquire private, state, and federal lands and dispose no longer necessary right-of-way properties. DOT&PF's land management authorities have been in place since statehood, and have proven both effective and constitutional. Under this bill, DOT&PF will continue to follow its current acquisitions and disposal processes and requirements for private, state, and federal lands—however only DNR will not have to do a separate and independent process for the “disposal” of state land when public domain land is incorporated into a DOT&PF project.

The current AS 38.05.030 requires that any less than fee interests (e.g. easements) assigned from DNR be returned to DNR for disposal when the property is no longer needed for transportation or public facility purposes. In practice, DNR's disposal of former DOT&PF infrastructure parcels and remnants takes years to decades, whereas DOT&PF normally can dispose excess property in six to ten months. DOT&PF and DNR each recognize that in many cases DNR has inadequate authorities to ever complete the property transactions necessary for DOT&PF project closeouts—which negatively affects the adjoining landowners and causes non-compliance situations with DOT&PF's federal funding agencies. The bill cures these problems by providing DOT&PF with primary authority over the surface estate of airport, highway, and public facility properties (Sec. 1, 6, and 9) and making discretionary any reversion of former public domain land to DNR upon DNR's request (Sec. 11, and Sec. 2, 4, and 10).

- **DOT&PF's current statutory authorities governing the disposal of land are limited to disposing of private land. It is the legislature's constitutional duty to establish statutes that provide for the sale of state land. Allowing DOT&PF to establish its own terms for disposal of state land violates the constitutional requirement that the legislature establish the law, and may violate the separation of powers doctrine.**

DOT&PF is a state agency, and the only land it is authorized to dispose is state land. (Once DOT&PF acquires private land, it is state land.) The reason that there are overlapping authorities in state law, as currently written, is that DOT&PF is fully empowered to acquire, manage, and dispose state right-of-way properties—which are a subset of state land—whereas DNR is fully authorized to acquire, manage, and dispose state land. DOT&PF acquires and disposes state land under its existing authorities. As described above, current authorities require DOT&PF's return of easements or assigned management rights to DNR when the surface estate is to be disposed.

The Legislature established the standard for DOT&PF disposal of its properties at statehood: DOT&PF may only dispose property that it determines is no longer necessary for transportation of public facility purposes (*See*, AS 02.15.070; AS 19.05.070; and AS 35.20.070). DOT&PF's determination to dispose property is based on the engineering decision of whether the property is excess to DOT&PF's operational needs; DOT&PF's standard is more fitting to the management of state transportation and public facility infrastructure than DNR's general “best interest of the state” standard.

Article VIII, Sec. 5 of the Constitution authorizes the Legislature to provide for transportation facilities and other public infrastructure. Under that authority, the Legislature empowered DOT&PF to manage these facilities, including the power to acquire necessary land and dispose no longer necessary land. The Legislature also granted DOT&PF authority to adopt regulations to implement its land management, acquisition, and disposal authorities (AS 02.10.010; AS 19.05.020; AS 35.05.020). The bill does not modify DOT&PF's standards or processes for disposal of excess right-of-way properties. However, the bill's sections 2, 4, and 10 provide uniform disposal language across DOT&PF's three disposal authorities so that DOT&PF's disposal regulations and procedures may be applied uniformly to a disposal of highway, airport, or public facility property.

- **No statutes are proposed regarding the process for DOT&PF's disposal of state land. DOT&PF is not required to use the comprehensive public notice standard required for the disposal of state land under AS 38.05.945-.946.**

As explained above, DOT&PF's disposal authorities were granted at statehood, and the amendments to provide uniformity across DOT&PF's statutes remain consistent with DOT&PF's current land disposal powers. In the same way that DOT&PF does not use DNR authorities for its acquisition or management of state right-of-way properties, DOT&PF does not use DNR's Alaska Land Act standards, procedures, or regulations for its disposals. DOT&PF conducts disposal of right-of-way properties, upon a finding that the property is excess to DOT&PF's needs, in accordance with its statutory land disposal authorities and implementing regulations. (*See*, 17 ACC 10.100-10.130)

DOT&PF provides public notice of all intended disposals or leases of state land in accordance with Article 8, Section 10 of the Constitution. *See*, 17 AAC 10.105(d) (notice of disposal to adjoining property owner); 17 AAC 10.110(d) (notice of disposal by competitive sale); 17 AAC 10.115(c) (notice of disposal through broker); 17 AAC 10.120(b)(2) (notice of land exchange); 17 AAC 10.130(d) (notice of disposal of property outside of right-of-way).

- **Citing Article 8, Sec. 6 of the constitution, DOT&PF says it will not manage state lands for multiple uses as DNR does because land used for government purposes is not included in the public domain. Since statehood, DNR has managed land used for governmental purposes in conformance with the constitutional principle of multiple use.**

Article VIII, Sec. 6 of the Constitution defines public domain lands—which are managed for multiple uses—to exclude limited use government purpose lands:

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.

Governmental purpose land outside of the public domain includes the transportation facilities, public facilities, and other improvements the Legislature may provide for under Art. VIII, Sec. 5. These government facilities are managed by their respective agencies for the intended purpose of the facility—whether it is a state airport, state prison, or state fish hatchery—and not for other potential multiple uses. Likewise, Article VIII, Sec. 7 authorizes the Legislature to designate special purpose sites for historic, cultural, recreational, or scientific value sites. DNR manages many of these legislatively designated areas—most notably the state parks and state forests—for the limited purpose of their legislative designation and not for general multiple use.

In AS 44.42.020, the Legislature empowered DOT&PF to manage, operate, and maintain state transportation facilities and public facilities. These government purpose properties are not included in the public domain and are independently managed by DOT&PF in accordance with Titles 02, 19, and 35. DNR has no statutory authority to manage these properties for transportation or public facility purposes, though DNR has statutory authority to administer its programs (mining, oil and gas leasing, timber sales, material sales, etc.) on state land.

- **When exercising its primary authority over state transportation and public facility land, under sections 1, 6, and 9 of the bill, how will DOT&PF establish terms and conditions applicable to DNR authorizations? Are there any limits?**

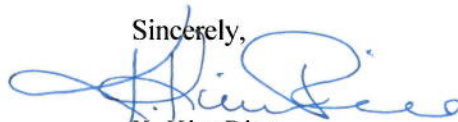
Sections 1, 6, and 9 will require DNR to seek DOT&PF concurrence for any DNR permitted activity in a DOT&PF right-of-way. Thus, if a state-owned airport is located within a tract of land being considered by DNR for an oil and gas lease application, DOT&PF will have the opportunity to review the lease application and condition development activities that may be proposed for the airport right-of-way. DOT&PF has fully developed regulations and permitting programs to authorize private activities on the state's transportation and public facility properties, while still protecting the public and the state's infrastructure. Any DOT&PF terms or conditions on DNR authorized activities would be issued in accordance with DOT&PF's existing permitting authorities, such as: airport boundary crossing permits (17 AAC 45.285); airport building permits (17 AAC 45.280); utility permits (17 AAC 15.010-901); highway encroachment permits (17 AAC 10.010-.015); access to or across highways (17 AAC 10.020-.095); private use of AMHS terminals and facilities (17 AAC 250-390).

- **Are material extraction and development activities on highway and public facility properties still subject to DNR permitting authorities, as indicated by sections 1, 6, and 9, even though control of the surface estate is being vested in DOT&PF?**

Sections 1, 6, and 9 establish DOT&PF's primary authority to manage the land and facilities located within the state's rights-of-way for transportation or public facility purposes. DNR retains its authority to permit certain activities on state land, although those authorizations are subject to DOT&PF conditions. For instance, extraction of materials by the public will still be allowed under DNR's authorities, though DNR must coordinate with DOT&PF on the terms and conditions of the third-party use of material sites in DOT&PF's rights-of-ways (DOT&PF is responsible for environmental compliance and safety/stability of these sites). DNR also retains its authorities over certain development aspects in DOT&PF rights-of-way subject to DOT&PF conditions, such as pipeline right-of-way leasing. Because DOT&PF is a state agency, its ownership of the surface estate of transportation and public facility properties does not hinder DNR's regulatory authority over activities on state land.

We hope these answers help clarify Senate Bill 211. If you or your committee members have any further questions, please feel free to contact us at 465-3906.

Sincerely,



K. Kim Rice
Deputy Commissioner