KETCHIKAN READY-MIX & QUARRY, INC.

4418 N. TONGASS HWY.
KETCHIKAN, ALASKA 99901

(907) 225-2925

FAX: (907) 225-0518

March 31, 2014

Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resource Committee

Honorable Senators and Representatives,

We are writing to provide written comments in response to Senate Bill 211 and House Bill 371 relating to State land and materials. Ketchikan Ready Mix and Quarry Inc. has concerns with the possible transition of DNR management of state land and material sales to DOT control. The material sales part of this bill could adversely affect small businesses such as ours. We have sold aggregate and concrete throughout Southeast Alaska for over forty years.

We have read all of the correspondences posted and feel that our concerns have been addressed several times over in the letters submitted by Chris Milles, Julie Smith and Dick Mylius. There seems to be no definite list of properties that will be affected by the proposed changes available to the public. The idea of an open "free range" selection creates uneasiness. Will private individuals and companies still be able to purchase material through DNR?

There is a need to identify in public the locations prior to this bill going forward as other small businesses such as ours may not even be aware of what is happening and how they may be affected. If this bill is to go through DOT needs to be on record of their willingness to lease to others if they are not using the land. This is essential to sites that are within the State ROW as it is easier for contractors to have access and shorter haul times when trucking to job sites.

Ketchikan Ready Mix has obtained several permits for material sales from DNR over many years and has had the pleasure of a smooth and quick process while working with Ted Deates. We have never been disappointed with the DNR process and received immediate and direct answers to questions or concerns.

Hearing about tougher economic times to come in the State of Alaska why would we want to create an unknown amount of additional costs?

Thank you for your time.

Sincerely,

Harold Enright
President

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

March 25, 2014

Honorable Senators and Representatives,

This is the third letter I have written to you related to SB 211. The first letter raised several constitutional questions and provided a list of some practical implementation questions related to the bill. The second letter attempted to connect the dots of how the flow of money and management responsibility would change as a result of SB 211. In some ways, this letter is a follow up to the most recent letter, as further reflection has helped me recognize that a good deal of the confusion related to SB 211 results from the lack of a fiscal note that details the impact this legislation would have on the budgets of DOT, DNR, and the State General Fund. But before I get to that question, I want to express the reason I care enough about SB 211 to keep writing to you about it.

I have many friends and colleagues who work at both DOT and DNR in Fairbanks. Over the years, both agencies have earned my respect and gratitude. I appreciate DOT for it's can-do attitude and ability to provide needed infrastructure in Alaska. Every time I see DOT employees working road construction or happen to notice a DOT vehicle driving down the road, I am grateful for the monumental work DOT accomplishes every day in creating and maintaining Alaska's transportation infrastructure. At the same time, I appreciate DNR's role in ensuring that the complex web of rights and responsibilities related to land use in Alaska is protected for the benefit of all Alaskans. In its role as land manager, DNR's mandate provides an expanded focus that looks beyond a current project and includes a wide range of multiple uses and environmental impacts.

I am concerned that SB 211 would upset the existing balance between DOT and DNR in ways that would degrade the constitutional and environmental protections currently embedded in Alaska's land management system. I am especially concerned about the provisions that would diminish DNR's management role or transfer title and vest control of material sites to DOT (Sections 3, 5, 8, and 13). Well-managed material sites provide a multitude of benefits to Alaskans. Material sites that are not managed well can diminish private property values and cause significant economic and environmental harm. This is especially true in material sites located within rivers and floodplains.[1]

[1] See Hungry Water: Effects of Dams and Gravel Mining on River Channels by Mathias Kondolf at http://www.wou.edu/las/physci/taylor/g473/refs/kondolf_97.pdf.

DNR plays an important role in identifying these issues and finding solutions that provide DOT with the gravel it needs to maintain Alaska's infrastructure while also protecting Alaska's land and resources for current and future generations.

While I understand DOT's frustration with onerous levels of oversight, I am concerned that the pendulum is swinging too far in the opposite direction. In 2009 DOT the acquired authority to conduct its own NEPA reviews for most of its federally funded projects.[2] In 2011, the Alaska Coastal Management Program was dissolved, relieving DOT of significant state oversight of many material sites located in rivers and floodplains. Now DOT is attempting to diminish or eliminate DNR's management role, and this is happening in the wake of significant statutory changes in 2012 that were specifically designed to streamline material sales in Alaska. Given these recent changes that reduce the role of other agencies in DOT projects, it seems to me that SB 211 goes too far.

These are the reasons I keep writing to you about SB 211, but I also have concerns about the bill itself. I've already expressed many of these concerns in my first two letters. As I've spent time thinking about the bill and wrestling with the impact it will have, I realized that one reason it's so difficult to understand is because the presentation of the bill has not included an accounting of the fiscal changes that will result to DOT, DNR and the State General Fund as a result of the bill:

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

AS 24.08.035(c) states that fiscal notes attached to bills must include, among other things, the fiscal impact on existing programs and a line item detail of the fiscal impacts. In my research related to this bill I have attempted to glean an understanding of the fiscal impact of SB 211, and have been unable to do so because the fiscal notes attached to the bill indicate there will be no fiscal impact. I therefore respectfully request that the bill be referred to the Legislative Finance Division for a fiscal analysis. I also request an opportunity to provide public comment to the bill after that analysis has been completed, and therefore request that the Transportation Committee hold the bill until such time as that opportunity becomes available.

I appreciate the opportunity to provide comments in my capacity as a private citizen and resident of the State of Alaska. Thank you for your time and attention.

Sincerely,

Julie Smith

---

[2] http://www.dot.alaska.gov/stwddes/dcspubs/assets/pdf/directives/attach/6004_ch1_120412.pdf

North Slope Borough

PLANNING AND COMMUNITY SERVICES DEPARTMENT

P.O. Box 69
Barrow, AK 99723
☎ (907) 852-0320
Fax: (907) 852-5991
Email: Rhoda.Ahmaogak@north-slope.org

Rhoda Ahmaogak, Director

March 21, 2014

The Honorable Dennis Egan
Alaska State Senate
State Capital Building
Juneau, Alaska

Subject: Senate Bill 211

Dear Senator Egan:

This letter is to offer comments and recommendations from the North Slope Borough Planning Department regarding Senate Bill 211, an Act providing the Department of Transportation & Public Facilities with numerous authority regarding land, easements, materials, and other matters.

First, please let me take this opportunity to thank you and your office for taking the time to consider our comments and interests.

Our primary concern is with Section 15 of the bill. This section authorizes the transfer of the surface estate, including material site development, at Franklin Bluffs and Happy Valley on the Dalton Highway from the Department of Natural Resources to the Department of Transportation & Public Facilities. The concept of a development node at these locations is undermined if the existing gravel pads are given to DOTP&F, and the NSB is left with bare tundra.

There is a long history of efforts between the North Slope Borough (NSB) and the Department of Natural Resources (DNR) towards completing the transfer of title to the NSB as a municipal land entitlement. As recently as January of this year, NSB staff met with DNR staff to discuss the status of this process. The Borough considers these two sites along the Dalton Highway among our top priorities for conveyance, but contamination at the sites had stalled consideration originally.

It came as a complete surprise to read in Section 15 of Senate Bill 211 that the Department of Transportation & Public Facilities (DOT&PF) was seeking the conveyance of the same property at Happy Valley and Franklin Bluffs. In addition, we don't understand why there is a desire to establish state airports at these locations when there are already state airports located in the vicinity.

The NSB is willing to listen and try to obtain a better understanding of the goals of the DOT&PF. Until we are able to reach that understanding, we would respectfully request consideration by the Senate Transportation Committee towards entirely removing Section 15 and section 13 from Senate Bill 211.

The NSB, DOTP&F and DNR are all partners in the management of the Dalton Highway corridor. Issues related to this partnership need to be resolved through a collaborative process and not through a legislative designation that prevents public involvement. We need to tackle policy considerations together, not separately, to ensure that development nodes are in place for the next large scale project in the corridor.
We would also like to offer some comments regarding other sections of Senate Bill 211.

Section 1 of the bill adds powers to DOT&PF for state airport operations. With respect to issues of land and gravel use, SB211 ignores that there are numerous examples of municipal airport operators who may desire similar authority. We would be happy to discuss this potential with DOT&PF and the Transportation Committee if there is an interest in pursuing this idea.

Sections 2, 3, 4, and 5 broaden DOT&PF's powers over land disposal, which is currently an authority of DNR. Under Sections 3 and 5, the department is given the authority to use gravel that may be contrary to local land use codes, and also fails to protect public interests related to land use and asset disposal. For example, it does not appear that DOT&PF will be subject to the requirements of a Best Interest Determination.

Sections 6, 8, and 9 relate to the Dalton Highway. There may be some inconsistencies between the authorizations in these sections of SB211 with the Dalton Highway Master Plan, and also with NSB land entitlement selections. These issues need to be resolved through the ongoing municipal entitlement process, not this way. These sections appear to provide eminent domain powers for one department of the State over another.

Section 10 appears to allow DOT&PF to determine that a sale of state land is in the public's best interest without public input. Blanket public interest findings without public input is generally not a good process. Perhaps the Transportation Committee and DOT&PF could consider how to develop standards for a public disposal process.

Section 13 appears to be inconsistent with NSB local land use code (Title 19), and also is void of public input on material sales. NSBMC discourages development of multiple material sites which has been DOTPF's practice along the Dalton Highway. Perhaps this authority should be clarified to be subject to local land use codes and processes.

Thank you for the opportunity to offer comments on SB211. We appreciate the efforts of the Senate Transportation to review this bill, and we are willing to discuss the points of this letter with DOT&PF.

Sincerely,

Rhoda Ahmaogak, Director
Department of Planning
North Slope Borough

CC: Office of the Governor
DOT&PF Commissioner Kemp
Senator Donald Olson
Representative Ben Nageak

March 19, 2014

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

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

Dear Members of the House Transportation Committee:

Thank you for the opportunity to provide additional comments on House Bill 371 – "State Land and Materials". These comments follow up on issues raised in my letter dated March 12. Where appropriate, I refer to DOTPF's responses contained in two letters dated March 13, 2014 from DOTPF Deputy Commissioner Kim Rice, one letter to Representative Wilson and the second to Senator Egan.

In my previous letter to the Committee, my comments were grouped into six topics. I will address them here in the same order.

1. Section 13 of HB 371 allows DOTPF to extract material, including gravel, from any existing material pit on state land even if the site was developed by another party for a different purpose. HB 371 allows DOTPF to take material from existing pits with no protection for existing, valid state material sale contracts. This is especially a concern on the North Slope where large gravel pits have been developed by private industry on state land to support oil and gas activities. Under Section 13, DOTPF can take gravel from these pits without regard to existing contractual rights of North Slope producers. Under other provisions of the bill, these pits could be selected by DOTPF and DNR would be required to transfer these privately developed pits to DOTPF.

   DOTPF's response in the first bullet of their letter to Representative Wilson misses my point entirely. While DNR could still sell material to the private sector, DNR has no ability to limit how much material DOTPF can take from these existing pits. Hence there may be insufficient material resources to fill existing contractual obligations and DNR would have no control over how much material may be available for future sales to other parties.

2. The bill ignores and allows DOTPF to override competing land claims, including potentially higher and better uses for the state lands at issue. This is particularly relevant regarding gravel and material resources, as sites with good gravel may also be good sites for schools, other public uses, or private development.

   Neither of DOTPF's letters address the issue of competing uses for the land. HB 371 requires that if DOTPF requests the land, DNR "shall" transfer it regardless of whether DNR, a municipality, or the private sector has identified the land as having a higher, better and potentially more important or valuable use.

The first bullet point in DOTPF's letter to Senator Egan argues that DOTPF's planning process adequately factors in such considerations. While this may be true for highway ROWs, DOTPF's planning process often does not identify specific material sources for its projects in advance, nor does DOTPF have a process for public input when selecting material sites needed for ongoing highway maintenance.

The fourth bullet of DOTPF's letter to Senator Egan addresses only one specific example of where this is a potential issue - the North Slope Borough's land selection at Happy Valley, and there it incorrectly interprets the state municipal entitlement statute. DOTPF's letter notes that municipalities can only select land that is "vacant, unappropriated, and unreserved", (VUU). The letter then goes on to state "because of this restriction, state transportation infrastructure is not normally available for municipal selection". This second statement is problematic for two reasons: first, the statutory definition of VUU land in AS 29.65.130(10) does not prevent the Borough's selection of state transportation infrastructure unless it is "set aside by statute for one or more particular uses or purposes" (the language in the statute) or classified under DNR's land classification statute as non-VUU. The airstrip at Happy Valley does not meet the statutory definition of non-VUU land. Second, the Happy Valley airstrip is not currently administratively reserved for DOTPF. It is on state land managed by DNR. DOTPF only has a pending application, as does the Borough. This legislation requires DNR to transfer the land to DOTPF without addressing the Borough's land selection.

3. The bill provides no mechanism where DNR can address public concerns with the proposed use, access issues, and conflicts with adjacent landowners and users. DOTPF's second bullet in its letter to Senator Egan addresses this issue, but the process DOTPF explains in the letter is not in the legislation. The legislation does not specifically provide DNR with an opportunity to respond to DOTPF's request other than to approve it. If there is a process it is left entirely to DOTPF's discretion to decide if the concern should result in change to their request, rather than the public land manager DNR.

4. The fourth point in my March 12 letter addresses the provision regarding Reciprocal Easements (Section 16 of HB 371). The proposed Committee Substitute introduced at the March 18 House Transportation Committee hearing satisfactorily resolves my concern by deleting the provision that implied additional easements were conveyed to the US Forest Service.

5. The Zero fiscal notes are unrealistic, as this bill will significantly add to DNR and DOTPF's workloads and costs.

The fifth bullet in DOTPF's letter to Representative Wilson partially addresses this issue, but only as it pertains to DOTPF land disposals and land acquisition for material sales. DNR has issued hundreds of authorizations to DOTPF (ROWs, material sales and interagency land agreements) for use of state land. If DOTPF requests that DNR transfer title of the surface estate to DOTPF for all or many of these existing authorizations, there will be a significant increase in DNR's workload. In addition, the land survey responsibilities required in the new AS 02.15.070 (c)(4)(for airports); AS

19.05.080(b)(4) (for highways); and AS 35.20.010(b)(4) (for public facilities) will be costly.

An additional comment not in my previous letter arises from DOTPF's comment at the very bottom of page 1 of the March 13 letter to Senator Egan that reads "DNR has never denied a DOT&PF request for public domain land to be incorporated into an infrastructure project". If so, then why is this legislation even necessary as DOTPF has been able to develop projects on state land without having the surface estate ownership?

Finally, transfer of title to the surface estate under roads, airports and material sites/gravel pits raises a host of new issues, including:

1. The bill requires DNR to transfer "surface estate" a term that I do not believe is defined in state law.
2. If existing state DNR managed land is transferred to DOTPF, how will DOTPF authorize and manage other non-DOTPF uses of the DOTPF owned land? For example, for highways, DNR currently grants a ROW, but DNR retains ownership of the land and is the agent for authorizing other uses. If DOTPF becomes surface owner, they would be responsible for managing, determining fees, and permitting other surface uses of that land. For example, the Trans Alaska Pipeline crosses the Dalton Highway and Richardson Highway numerous times. If DOTPF owns the highway ROW, they will then become the manager for short segments of the pipeline, adding another state agency to the administration of the pipeline ROW. Similarly, any future gas line that crosses a highway corridor owned by DOTPF would need to get a separate authorization from DOTPF.
3. The bill does not specify the width of highway corridors that DOTPF can request, nor does it define what is "Reasonably necessary". DOTPF will define "reasonably necessary", and under the legislation could select and DNR would be required to convey large tracts of state land for potential future transportation routes such as the Northwest Access corridor. This could significantly complicate and compromise the future use of the adjacent lands that remain in DNR management.

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.

I thank the committee for the considering these concerns.

Sincerely,

Dick Mylius
3018 Alder Circle
Anchorage, Alaska 99508
907-748-7471

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

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

March 18, 2014

Honorable Senators and Representatives,

It has been a struggle for me to understand SB 211. I shared many of the questions that have come up for me related to this bill in written comments I submitted yesterday morning. This evening I listened to the audiotape of the HB 371 Transportation Committee hearing that occurred earlier today. A significant part of that meeting was focused on legislators attempting to understand how SB 211 would impact the flow of money related to material sales. The conversation was not easy to understand. Listening to the audio, I was confused. It sounded like many others were also confused. Several representatives mentioned they felt the conversation was circular, and they didn't really understand what was being said. I felt the same. There was a moment of clarity for me, however, in a very brief conversation that took place between DOT Right of Way Chief John Bennett and Representative Feige. It happened so fast that I almost missed it. I went back to listen again, and then decided to type out what was said, just to make sure I understood it correctly. Here are my notes of what was said along with the time markers of the audio recording:

2:47:04

Representative Feige: How does this [the flow of money related to material sales] apply in projects that are funded by the federal government?

Mr. Bennett: Most of our projects are funded through the federal government and so basically we are using federal dollars to pay this 50 cent per cubic yard fee that goes to DNR and then for the most part ends up in the General Fund.

Representative Feige: So the process still gets you basically more legs on the federal dollars to take in for any given project?

Mr. Bennett: That's correct.

Representative Feige: Thank you.

2:47:47

I am grateful for this testimony because for the first time I feel that I might understand SB 211. Since this bill has been so confusing, I will outline my current understanding below. I hope someone who knows more about SB 211 than I do will provide any needed corrections.

Current Material Sale Funding and Work Flow								
Federal Government initiates project funding that incudes paying DOT $$$ for gravel	→	DOT passes $$$ to contractors for contractor gravel costs	→	Contractors pass $$$ to DNR for gravel fees	→	DNR passes $$$ to State General Fund	→	State General Fund receives $$$
Federal Government Funds Projects	→	DOT, Contractors and DNR are ALL "middle men" between federal and state governments in a flow that results in the federal government paying the state government for state gravel resources for federally-funded projects.					→	State is paid for state resources that are used in federal projects
		DOT Plans State Projects		Contractors Implement Project Plans		DNR Manages State Resources		

SB 211 Material Sale Funding and Work Flow			
Federal Government initiates project funding that incudes paying DOT $$$ for gravel	→	DOT receives $$$	
		DOT Plans State Projects	Contractors Implement Project Plans

Once again, I appreciate the opportunity to provide comments in my capacity as a private citizen and resident of the State of Alaska. Thank you for your time and attention.

Sincerely,

Julie Smith

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

March 17, 2014

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.

---

[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?

---

[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

Rebecca Rooney

From: Dick Mylius <rhmylius@aol.com>
Sent: Thursday, March 13, 2014 2:27 AM
To: Rep. Eric Feige; Rep. Peggy Wilson; Rep. Lynn Gattis; Rep. Craig Johnson; Rep. Doug Isaacson; Rep. Bob Lynn; Rep. Jonathan Kreiss-Tomkins
Cc: sean.lynch@alaska.gov; johnf.bennett@alaska.gov; ed.fogels@alaska.gov
Subject: House Bill 371 - State Land and Materials
Attachments: Testimony of Dick Mylius on HB 371.docx

To Members of the House Transportation Committee: I was unable to testify at the March 11 House Transportation Committee hearing on House Bill 371 (State Land and Materials) as the time conflicted with the Senate Transportation Committees hearing on the same bill. Attached are my detailed comments on HB 371.

I urge the committee to reject or require significant revisions to HB 371 as it does not protect the public interest in state lands. The bill takes away any authority of DNR to approve, modify, condition, or deny any request from DOT for land that DOT desires for transportation and public facilities, including gravel and material sites.

As I know you are busy - I'll highlight the six main points that are explained in much greater detail in the attached letter:

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;

2. The bill ignores and overrides competing land claims, including potentially higher and better uses for the state lands at issue (particularly relevant regarding gravel and material resources);

3. The bill provides no mechanism to address public concerns with the proposed use, access issues, and conflicts with adjacent land owners and users;

4. The provision regarding Reciprocal Easements (Section 16) coveys easements to the US Forest Service on tidelands and submerged lands that are important for public access and appears to do this without the Constitutionally required public notice;

5. The Zero fiscal notes are unrealistic as this bill will significantly add to DNR and DOTPF's workloads and costs;

6. To date many parties directly and potentially impacted by this bill, including private and public operators and users of gravel pits on state land have not been informed of this legislation and how it may impact them.

Sincerely, Dick Mylius

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 "shall" 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,

Dick Mylius
3018 Alder Circle
Anchorage, Alaska 99508
907-748-7471

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

-----Original Message-----
From: Chris Milles [mailto:millesric@alaska.net]
Sent: Wednesday, March 12, 2014 2:18 PM
To: Sen. Click Bishop; Sen. Dennis Egan; Sen. Fred Dyson; Sen. John Coghill; Sen. Cathy Giessel; Sen. Pete Kelly; Sen. Peter Micciche; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French; Rep. Eric Feige; Rep. Peggy Wilson; Rep. Tammie Wilson; Rep. Dan Saddler; Rep. Mike Hawker; Rep. Lynn Gattis; Rep. David Guttenberg; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Doug Isaacson; Rep. Paul Seaton; Rep. Scott Kawasaki; Rep. Bob Lynn; Rep. Geran Tarr; Rep. Bob Lynn; Rep. Jonathan Kreiss-Tomkins; Rep. Steve Thompson; Rep. Pete Higgins; Dana Owen
Cc: ed.fogels@alaska.gov; wyn.menefee@alaska.gov; brent.goodrum@alaska.gov; jeanne.proulx@alaska.gov; rhmylius@aol.com
Subject: HB 371/SB 211 Comments

Dear Senators and Representatives:

As a retired State of Alaska, DNR land manager with over 33 years of service, and as a born and raised Alaskan, I offer the following comments on SB 211 and HB 371.

I would like to begin my comments by providing some perspective. Any mention to DNR in this email is meant to reflect my perspective of DNR based upon my experience, not the Department's perspective.

The Department of Natural Resources is a multiple use state agency. As such it evaluates and manages the land and resources in "trust" for the residents of Alaska and all state agencies. An example of this is that the DNR evaluates the impacts of all actions on state land, including the impacts on neighboring residents and commercial uses, access concerns, fish and wildlife impacts, and others in determining whether or not an action is in the state's interest.

The DOT's philosophy is that if a project is funded by the legislature then it is in the state's best interest and whatever needs to be done to facilitate that project is therefore in the state's best interest as well. This point of view reflects DOT's role as an agency that is highly focused and project-oriented. DOT is not a multiple use agency set up to address the multiple use resource issues DNR is constitutionally required to address. It is simply not DOT's role or function to consider multiple land issues.

DNR as a state agency should support projects that are funded by the legislature and facilitate the project, but should do so while creating a process for individuals and companies impacted by DOT projects to participate in determining how those projects can move forward in ways that are beneficial not only for DOT's project, but also for other people using Alaska's resources. DNR's management of material sites, for example, makes it possible for DOT to extract the material they need, while also providing material from the same sites to other agencies, individuals, and industry. The DNR has supported multiple use by encouraging that most sites remain ungated for public recreational use. DNR also makes it possible for the Division of Forestry to use material sites to access state land for timber sales and to provide staging areas for fire suppression efforts, and for the Division of Parks to gain access to any material they may require. DNR is also involved in establishing specific operating requirements in material sites like limiting hours of operation in sites located next to campgrounds. These are all examples of the ways DNR's multiple use management supports DOT projects while also protecting other uses of state land.

The DNR provides DOT with a variety of authorizations for their activities. These include easements/rights-of-ways for highways and access to material sites, Inter-Agency Land Management Assignments or ILMAs for airports, harbors, and maintenance sites, and authorizations for material sites. In recent years statute changes have significantly streamlined the process for material sales. These changes have already reduced the time required to provide DOT with material sale contracts.
While some DOT material sales continue to take longer to process, these sites typically present complex issues because they are located within rivers or floodplains. DOT could significantly reduce DNR's time to process these material sale applications by respecting the process and providing the agencies with hydrological information outlining the expected impact of their activities in rivers and floodplains. This analysis is required under both federal law for federally-funded projects and state policy for state-funded projects, but is rarely provided by DOT. Delays in completing DOT applications for material sales in rivers and floodplains is often due to the significant problems that have already developed in these sites and the need for additional information from DOT to address the hydrologic issues that arise in in-river and floodplain sites.

Before I retired, DNR and DOT were directed by the Governor's Office to work on ways to streamline the material sale process. DOT wanted DNR to, in short, provide unlimited material for DOT projects for an unlimited time frame as the legislature provided funding for a highway project, therefore anything associated with that project was in the state's best interest. Many options were discussed to include transferring title to DOT for sites and/or authorizing sites under an ILMA. The DNR, DMLW, Northern Region evaluated approximately 20 material sites for transfer under an ILMA. The process included ADFG, Forestry, and Parks. Of the 20 sites, DNR determined that one or two sites were without issues and could be authorized under an ILMA to DOT.
The other sites had public access issues, ADFG issues such as riparian zones, third party needs for gravel and public use issues that were more suited to DNR management.

The outcome of this project was not to DOT's liking so DOT suggested that another option was to issue DOT a material sale contract with an unlimited term and unlimited volume. Now, it is apparent that DOT would rather not work with another state agency and instead has circumvented the DNR by submitted a bill through the Governors Office that would do exactly what they could not do by working with the state agencies to find a solution. This is extremely convenient for DOT as protocol dictates that DNR staff can not speak freely about the bill as they must support the Governor's bill. As such, it is up to the public to speak to the bill.

The Transportation Committee has already head testimony from Dick Mylius, a former Director of the Division of Mining, Land and Water.
Dick's testimony is spot-on and should be fully taken into account in deliberations on this bill. This bill gives DOT unlimited and unrestricted use of state land for DOTs purpose and DNR shall transfer to DOT "whatever" DOT wants and desires.

This bill also gives DOT the ability to dispose of state land that it acquires under this bill or return it to DNR. Under existing statutes, DOT returns to DNR any state land it acquired from DNR. This does happen on occasion, but rarely. When it does happen, it is because there is an opportunity to divest DOT's interests that have become complicated by unauthorized third party uses. In order for DOT to divest state property, it would seem appropriate that statutes that parallel DNR statutes related to disposals of state property be set up. In fact, the Alaska Constitution and subsequent statutes and regulations have been developed to articulate what is required for the state to dispose of state land. But then why create a new process for DOT to perform this function when there is an existing state

agency already set up to transfer property to the public for private or municipal uses with existing authorities.

I also want to note for the record that under the bill as currently written, DOT will have authority to enter onto any state land as state land is not defined to preclude legislatively designated areas.

I am not sure what the fiscal note is attached to this bill, but DOT will definitely require additional personnel to properly manage all aspects of this bill. The survey requirements alone are staggering, as most of the hundreds of material sites throughout the state are not currently surveyed. Rhetorically, why not provide DNR with additional funding to properly manage material sites and state land in general rather than strip it of its duties.

DNR is the state agency set up to manage public resources for all of Alaska. It is the multiple use agency that addresses public concerns through an open public process. Granted this takes time to accomplish but doesn't the public deserve that time that it takes to make an informed decision rather than what appears to be a gigantic land grab for DOT for DOT's purposes without any checks and balances.

Given the concerns surrounding this bill, I would request that the legislative branch provide the opportunity for additional public comment or table the bill until a later session. The bill was introduced on March 7 (Friday), and public testimony was held on March 11 (Tuesday).
I doubt that many people have had a chance to read the bill or to prepare comments. Given the significant changes to land management proposed by this bill, an additional opportunity for public comment is warranted.

Thank you for your time and again, I strongly suggest that you address the concerns of Dick Mylius as presented in his testimony and follow-up correspondence.

Chris Milles
1603 Carr Ave
Fairbanks, AK 99709
907-978-2293