

Dear House Resources Committee members:

As currently drafted, CSHB 371 raises many questions and concerns, and risks creating more complications and uncertainty.

One of my concerns with the bill is in regard to state land assigned, or as proposed under the bill, “transferred,” from DNR to DOT&PF. AS 38.05.030(b) provides that Alaska Land Act provisions do not apply to real property acquired by DOT&PF. Conversely, the Act’s provisions do apply to land assigned to DOT&PF by DNR. In addition, the statute requires that lands assigned by DNR to DOT&PF be returned to DNR when they are no longer needed.

CSHB 371 would provide DOT&PF with primary authority over the surface estate of all airport, highway and public facility properties and make the return of assigned or transferred land to DNR discretionary. Among other things, DOT&PF says that the reasons for these changes are that DNR takes too long to dispose of former DOT&PF infrastructure parcels and remnants and has inadequate authority for the disposals.

AS 38.05.035(b)(7) specifically provides DNR with the authority to dispose of right-of-way remnants to an adjoining landowner. If this statute is inadequate, perhaps it could be amended to address the problem – rather than providing a broad grant of authority to DOT&PF over surface estates and overturning a long-standing requirement for certain lands to be returned to DNR for appropriate management or disposal.

I am also concerned about DOT&PF’s interpretation of the state constitution, Article 8, Section 6. In their response to comments, they seem to be saying that any lands managed for government purposes do not need to be managed for multiple uses. I believe it is more complicated than that.

AS 38.05.300 states that, for areas larger than 640 contiguous acres, except by act of the legislature, state land may not be closed to multiple uses, or otherwise classified such that mining activities are precluded. Mining could be precluded when the classification is necessary for “the development of utility or transportation corridors or projects or similar projects or infrastructure.” The statute does not preclude multiple purpose use of land classified for a particular use whenever different uses are compatible.

For example, AS 41.21.110 provides for the closing of the Chilkat State Park to multiple purpose use in conformity with AS 38.05.300. AS 41.21.111 reserves the park areas “from all uses incompatible with their primary function as public recreation and water...” AS 41.21.112 directs the DNR commissioner to designate by regulation the incompatible uses. Presumably compatible uses may continue to be allowed. In other words, the closing of state land used for government purposes to multiple use is not a given – it depends on the statutes for a particular area and the particular use.

The issue of multiple use requirements and how they apply to lands used for transportation and public facilities would require additional review and discussion if the current provisions in CSHB 371 are considered further.

In my comments on the companion legislation, SB 211, I posed several questions regarding how sections 1, 6 and 9 would work in regard to DNR permitting authorities. In their response to comments dated March 31, 2014, DOT&PF provided an explanation. The problem remains that the proposed language in the bill is not clear and could cause confusion in its implementation. Someone reading these statutes should not have to review the bill file and administration's testimony to divine their meaning.

Also in their March 31 response, DOT&PF explains that the proposed amendments are designed to address the overlapping management authorities of DOT&PF and DNR. The department asserts that overlapping authorities and differing missions between DOT&PF and DNR results in "land management paralysis situations."

I believe the differing missions are exactly why DNR should retain its land management authority over state lands used for transportation and public facilities. The different missions ensure that potentially competing land and resource uses are addressed in the public's interest when the state makes use of state land and resources for transportation projects. On balance, the state will achieve better development when the two agencies work together with each representing their respective authorities and missions.

In conclusion, I oppose CSHB 371 as written.

Thank you for consideration of my comments.

Sincerely,

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