



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Transportation and  
Public Facilities

Department of Natural Resources

April 9, 2014

Senator Dennis Egan, Chair, Senate Transportation Committee  
Representative Peggy Wilson, Chair, House Transportation Committee  
Representatives Dan Saddler & Eric Feige, Co-Chairs, House Resource Committee

Dear Senator and Representatives:

The Department of Transportation and Public Facilities (DOT&PF) and the Department of Natural Resources (DNR) would like to follow-up and provide additional detail to the responses provided in DOT&PF's letter to you dated April 2, 2014 in order to further address the concerns of Mr. Harold Enright, and Ketchikan Ready-Mix & Quarry, Inc. concerning HB 371.

- **Mr. Enright is concerned that the transition DNR management of state land and material sales to DOT&PF control could adversely affect small businesses such as Ketchikan Ready-Mix.**

The bill's clarification of DNR's and DOT&PF's respective authorities and management responsibilities affect state-owned material sites in three ways, which are discussed below. Public access to state-owned material sites is preserved under the bill and, as a result of this bill, private contractors relying on state-owned material sites will likely see improvements in DNR's processing and issuing material sales contracts.

First, where DOT&PF already manages material sites as the pit operator within an airport or highway right-of-way, sections 1, 6, and 9 of the bill recognizes DOT&PF as primary manager of the surface estate of those lands; however sections 1, 6, and 9 also explicitly recognize DNR's authority to administer its programs, including the authority to sell material to the public from state-owned material sites. All DNR authorized activities within a DOT&PF right-of-way—including material sales—may contain DOT&PF terms and conditions to protect the state's facilities and the travelling public.

Second, sections 3, 5, and 8 would allow DOT&PF to have material sites located on public domain land transferred from DNR to DOT&PF for incorporation into a DOT&PF construction or maintenance project; however, sections 3, 5, and 8 require that proposed transfer be based upon a publicly noticed determination that the proposed transfer is reasonably necessary for the DOT&PF project. Sections 3, 5, and 8 also require that all transfers of public domain land from DNR to DOT&PF are subject to valid existing rights, so DOT&PF must honor existing material sale contracts and other third party rights. Once a public domain property is incorporated into a DOT&PF project, the property is managed under the primary authority of DOT&PF with continued program authority of DNR (sections 1, 6, and 9 of the bill).

Therefore, DNR could continue to make further third-party material sales from the sites on DOT&PF conditions, and determination that there is availability.

Lastly, section 13 would allow DOT&PF to use any state-owned material sites without contract or restriction by DNR. This DOT&PF exemption to DNR's material sales contracting provisions does not relieve DOT&PF from compliance with all other state laws. When DOT&PF uses state-owned material sites it must honor any DNR contractual commitments for third-party use of the sites (AS 45.02.301), abide by all municipal ordinances including planning and zoning ordinances (AS 35.30.20) and compensate for any taking of third party materials. (Alaska Constitution, Article 1, Section 18, "*Private property shall not be taken or damaged for public use without just compensation.*") Therefore, the DOT&PF exemption to DNR contracting requirements will not lead to a DOT&PF free for all in state-owned material sites.

- **"Will private individuals and companies still be able to purchase materials through DNR?"**

Nothing in the proposed bill will change DNR's Alaska Land Act authority sell materials from state lands to private individuals and companies, other than allowing DOT&PF to place terms and conditions on DNR material sales contracts from material sites located in DOT&PF rights-of way. Therefore, the existing and proposed process for a private business to purchase materials from a state-owned designated material site where DOT&PF has primary management authority requires that DNR coordinate with DOT&PF to avoid impact to their operations. Just as the situation is today, if a sale can be allowed, the sales contract will continue to be issued by DNR.

- **If this bill goes through, DOT needs to be on record of their willingness to lease to others if they are not using the land."**

DOT&PF does not currently have authority to lease or sell materials, as material sales is a program administered by DNR, and this bill does not provide authority for DOT&PF to sell materials. Material sales to third parties will still be handled under the authority of DNR. An example of terms and conditions that DOT&PF expects to place on DNR material sales would be to ensure compliance with DOT&PF environmental permits and authorizations and to ensure the safety of the travelling public and the state's infrastructure.

- **"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 site."**

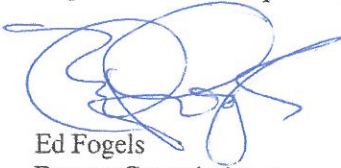
We agree that the availability of materials from state lands is important to maintain efficient operations for private contractors. DNR issues third-party material sale contracts once a determination that adequate material is available from DNR's designated material sites; materials will continue to be available to the public from these DNR designated sites. In fact, DOT&PF when bidding projects relies on the availability of local companies' products made from these sources (for example concrete).

Thank you for your time, and I hope these more detailed answers will help clarify our earlier responses to Ketchikan Ready-Mix & Quarry, Inc.'s questions. If you or the committee members have any further questions, please feel free to contact Kim Rice at 465-3906.

Sincerely,



K. Kim Rice  
Deputy Commissioner  
Department of Transportation & Public Facilities



Ed Fogels  
Deputy Commissioner  
Department of Natural Resources