



April 13, 2014

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

Dear Senator and Representatives:

This letter provides a response to Cliff Baker's letter and encloses a four-page table summarizing all the comments received to date and DOT&PF responses. The intent of the table is to capture the essence of the comments and DOT&PF responses, including changes to the bill. It also provides Committee Members with a tabulation of comments and a tool to organize the documents that are posted.

In response to the April 7, 2014 letter from Cliff Baker regarding House Bill 371 and SB 211, we offer the following:

- **Sections 3, 5, and 8 state the transfer of land from DNR to DOT&PF is not a "disposal" of state land, thereby eliminating any consideration of ongoing DNR projects, public interest, compensation, and possibly third party interests (lease or sale contracts) in the land.**

State public domain land does not leave state ownership when it becomes incorporated into state-owned infrastructure; thus, there is no "disposal" of state land when land is transferred from DNR to DOT&PF. The bill eliminates the DNR processes that are normally undertaken for a permanent disposal of state land outside of state ownership (sections 3, 5, and 8). However, the elimination of this duplicative and unnecessary step in an interagency transfer of land does not eliminate DOT&PF's in-depth, multi-agency, and often multi-year review of the social and environmental effects resulting from the infrastructure improvements and the creation of a larger infrastructure footprint.

DNR and its regulatory subdivisions are consulted on the design and potential impacts of each DOT&PF project, along with all other state and federal resource and regulatory agencies. The public interests are expressed directly, in the multiple public comment periods for each project, and indirectly in public comments on each of the environmental permits and authorizations for a DOT&PF project. Sections 3, 5, and 8 also make explicitly clear that any DNR transfer of public domain land to DOT&PF is subject to valid existing rights, which would include any third party lease or material sales contract.

- **DOT&PF's taking of public domain land without compensation will most likely defeat DNR's ability to meet the Constitutional mandate "to encourage settlement of land and development of resources."**

State public domain land has always been made available for state public infrastructure development without compensation, as DNR and DOT&PF are both agencies of the State of Alaska. Compensation for

the use of public domain land would require the State of Alaska to compensate itself. Likewise, both agencies are under the Constitution's Article VIII, Sec. 1 directive to encourage the settlement of State land and the development of State resources by making them available for maximum use consistent with public resources.

DOT&PF's delivery of legislatively approved capital improvements—including roads to State subdivisions and areas rich in natural resources—is in conformance with this Constitutional directive.

- **If DOT&PF receives land from DNR without fair market compensation any money received from the disposal of property should be distributed to DNR.**

The State of Alaska does not require the transfer of fair market value payment (and the costs of appraisal and administering payment) when public domain land is transferred from one state agency to another. Similarly, the State of Alaska receives all proceeds from the disposal of state land, whether the disposal of property is conducted by DNR or DOT&PF.

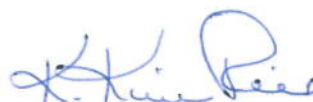
- **Section 13 (DOTPF waiver of DNR material sales contract requirements) will deprive DNR of income needed to manage the state's resources, and may tie up material sites that are not necessary for DOT&PF projects.**

Currently DNR sells state-owned materials to DOT&PF at the below market rate of \$.50 per cubic yard. The legislature has authorized below market rates to charitable and public entities since statehood (AS 38.05.810), and the rate collected by DNR covers the administrative expenses of processing the associated material sales contracts. Section 13 exempts DOT&PF from DNR's material sales contract requirements, so there will be no associated DNR administrative expenses when DNR no longer processes these DOT&PF contracts. Therefore, DNR's income and expense for its program should remain static (though it may free up DNR staff time to focus on other rate paying matters).

Section 13 of the bill exempts DOT&PF from DNR material sales contracting requirements, but it does not limit DNR's ability to issue material sales contracts to others under its Alaska Land Act authorities. As this bill does not hinder DNR from issuing contracts, we see no possibility that the DOTPF exemption could "tie up" material sites.

We hope these answers help clarify House Bill 371. 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

Commenter	Affiliation	Date of Letter(s)	Comments	DOT&PF Response
Letters Opposing HB 371/SB 211				
1. Dick Mylius	Retired DNR employee	3/11/14 3/12/14 3/19/14	<p>1) Use of verb "grant" could be interpreted as a "transfer" of reciprocal easements without public notice.</p> <p>2) Zero fiscal note is unrealistic.</p> <p>3) Opposed to legislative determination of municipal entitlement selection.</p> <p>4) The bill provides no process for DNR to address public concerns in a land transfer.</p> <p>5) The bill provides no protection for existing private material sales contracts.</p> <p>6) The bill ignores multiple use management of state lands.</p>	<p>1) CS revises Section 16 to remove verb "grant", but to still authorize DNR to extend terms of reciprocal easements for a term in excess of 55 years.</p> <p>2) The bill will reduce the administrative overhead burden for both agencies and other future activities such as surveys are provided as part of project funding.</p> <p>3) The section transferring Happy Valley &amp; Franklin Bluffs was removed in the 2nd CS.</p> <p>4) The bill does not modify or otherwise reduce the extensive public and regulatory agency processes required for project development. The various divisions of DNR are extensively involved in these processes. The bill provides for no net loss in public notice or involvement.</p> <p>5) The bill does not modify or otherwise reduce the applicability of state law (AS 45.02.301) that require the state to honor its contracts and to justly compensate any taking of property necessary for a public project (Const. Art 1, Sec 18).</p> <p>6) The bill waives the Alaska Land Act multiple use review for a "disposal" of state land, for public domain determined to be "reasonably necessary" for a DOT&amp;PF project. After the extensive public and regulatory processes there are rarely if any alternative parcels that could be selected-making the weighing of other potential uses an unnecessary step. All transfers from DNR to DOT&amp;PF are subject to valid existing rights and thus retain other approved uses.</p>

Commenter	Affiliation	Date of Letter(s)	Comments	DOT&PF Response
2. Julie Smith	Current DNR employee- Commenting as Private Citizen	3/17/14	Letters Opposing HB 371/SB 211 1) How will DNR transfer the thousands of acres of lands required under sections 1, 6 & 9?  2) The land transfers violate the constitutional requirement of public notice prior to a disposal.  3) What is the expected cost of surveying the lands to be transferred? 4) Where will the money currently charged for material sales go?	1) These right-of-way properties are currently held and managed by DOT&PF and the boundaries of these facilities are recognized by DNR & DOT&PF. Sections 1, 6 & 9 recognize DOT&PF's fee title for the surface estate of former public domain land (current easement interests), but there will be no transfer of land out of state ownership. 2) Lands transferred between two state agencies do not leave state ownership and so do not constitute a disposal under the constitution. Sections 3, 5 & 8 require public notice of intended transfers. 3) There are no intended transfers of land for existing facilities. Survey costs for future property needs is a capital component our projects. 4) Elimination of the materials fee should result in lower project bids, which lowers the capital cost of the project (i.e., a savings to the state from unspent money).
		3/18/14		
		3/25/14		
3. Lisa Weissler	Changing Tides Consulting – Former Department of Law DNR -AAG	3/24/14	1) Lands received from DNR should be returned to DNR as required under AS 38.05.030.  2) How will DOT&PF establish terms and conditions applicable to DNR authorizations?	1) Currently, adjoining property holders are held in DNR processing limbo for years to decades after a DOT&PF construction project before DNR issues sufficient title for these private owners to improve their properties to a realigned highway. This is 100% state-caused delay, and 100% state-caused extra expense for private property holders. The bill would give DOT&PF and DNR the discretion and flexibility to cure these state-caused problems. 2) DOT&PF has established regulations and permitting programs that allow certain private activities on transportation facilities while protecting the public infrastructure and maintaining compliance with our federal funding agencies.
		4/7/14		

Commenter	Affiliation	Date of Letter(s)	Comments	DOT&PF Response
Letters Opposing HB 371/SB 211				
4. Chris Milles	Retired DNR employee	3/12/14	<p>1) Why create a new process for DOT&amp;PF to dispose of land interests?</p> <p>2) Commented on need for multiple use management and maintaining a public process.</p>	<p>1) DOT&amp;PF has had land disposal authority since statehood. This bill just adds flexibility for DOT&amp;PF and DNR to transfer back or dispose no longer necessary infrastructure property.</p> <p>2) See Mylius comments and responses.</p>
5. Rhoda Ahmaogak	North Slope Borough	3/21/14	Oppose Section 15, transfer of Happy Valley & Franklin Bluffs sites to DOT&PF due to NSB selections.	Current CS has removed Section 15 regarding transfer of these two sites.
6. Harold Enright	Ketchikan Ready-Mix & Quarry, Inc.	3/31/14	Change in material sales could adversely affect small businesses.	Material sales to private businesses will continue to be processed by DNR. There should be no change from the current process, with regard to DNR's processing 3rd-party sales contracts.
7. Cliff Baker	Current DNR employee/ former DOT&PF employee – Commenting as private citizen.	4/7/14	DOT&PF should not take or dispose DNR lands without compensation. Payment for materials is necessary for DNR to perform its duties.	<p>The \$0.50/c.y. payment for materials was an administrative processing fee. As the bill eliminates materials contracts for DOT&amp;PF, the processing fee is no longer necessary.</p> <p>Compensating DNR for land used for public infrastructure has never been done, and is unwarranted as the lands continue to be in state ownership. DNR and DOT&amp;PF are both state agencies, and any revenue generated from disposals results in state income—no matter which agency completes the transaction.</p>

Commenter	Affiliation	Date of Letter(s)	Comments	DOT&PF Response
Letters Supporting HB 371/SB 211				
1. Tom George	Aircraft Owners and Pilots Association (AOPA)	3/14/14	Increased efficiencies with DNR land transfers, retention of Happy Valley and Franklin Bluffs.	In support of bill.
2. John MacKinnon	Associated General Contractors of Alaska (AGC)	3/17/14	Improvements in reciprocal easements, material site permitting, and elimination of redundant requirements.	In support of bill.
3. Anton Johansen	Great Northwest, Inc.	3/19/14	More efficient acquisition of land and material from DNR will reduce project delivery time.	In support of bill.
4. Michael Miller	AK Region-Granite Constr. Company	3/19/14	Common sense approach to payment for materials, and elimination of redundant processes.	In support of bill.
5. Ben Northey	Colaska, Inc.	3/20/14	Eliminate unnecessary delays with transfer of DNR lands and materials, increase efficiency.	In support of bill.
6. Dave Cruz	Cruz Construction, Inc.	3/25/14	Streamline permits for gravel, benefit to all construction trades.	In support of bill.
7. Tim Gallagher	HDR Alaska, Inc.	4/1/14	Increasing efficiencies critical to economic viability.	In support of bill.
8. Dan Hall	Knik Construction	3/21/14	Increase efficiencies, streamline projects & cut red tape.	In support of bill.
9. Stewart Osgood	DOWL HKM	3/23/14	Removes onerous oversight, allows DOT to make timely decisions to reduce project delivery.	In support of bill.
10. Steve Lundgren	Fairbanks Chamber of Commerce	3/31/14	Will streamline land transfers that has delayed projects and increased costs. Support transfer of Happy Valley and Franklin Bluff	In support of bill.