THE STATE of ALASKA

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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:

The Department of Transportation and Public Facilities (DOT&PF) submits these responses to Lisa Weissler's April 7, 2014 statement of concerns about HB 371, addressed to the House Resources Committee. Ms. Weissler, as a former assistant attorney general representing the Department of Natural Resources (DNR), is well versed in the DNR's governing laws and regulations. However, HB371 was co-written by DNR and DOT&PF attorneys and staff to address and clarify overlapping management authorities stemming from both DNR's and DOT&PF's governing laws and regulations. Familiarity with each agency's laws, processes and complexities is necessary to value the bill.

Ms. Weissler advocates that former public domain land incorporated into the state's infrastructure—which includes all pre-statehood rights-of-ways and facilities and portions of most every other state infrastructure project built since statehood—should be managed under DNR's multiple use mandates. The problem with this advocacy is that the state's transportation and public facility infrastructure has never been managed under the multiple use mandates of the Alaska Land Act and has always been managed under the government use directives of Titles 02, 19, and 35. The Alaska Land Act is quite clear in AS 38.05.030(b) that DNR's statutes and authorities do not apply to DOTPF's acquisition, management, and disposal of transportation or public facility property. DOT&PF exclusive management authority over the state's rights-of-way for transportation and public facility purposes is unquestioned by DOT&PF and DNR, and is clear in state law. Attempting to convert this stable program to multiple use management of the state's infrastructure would be disastrous and would invite sanctions for the state's violation of federal funding commitments that have made much of the state's infrastructure development possible.

The Alaska Land Act contains a provision that assigned management interests (i.e., easements) shall be returned from DOT&PF to DNR when no longer needed by DOT&PF. This provision makes sense, as DOT&PF cannot dispose the underlying excess property under its Title 02, 19, and 35 authorities, when it only holds an easement interest. In practice, however, this limitation burdens the unlucky property owners adjacent to former public domain land since the disposal of excess property to reconfigure their property to match a DOT&PF realignment will take many years and up to tens of thousands of dollars in excess of what neighbors who can receive title directly from DOT&PF will pay. DOT&PF and DNR recognize that the two agencies can achieve

far greater efficiencies, with lower costs to the state and public, if DOT&PF was given the flexibility to dispose of these former public domain right-of-way remnants in the same manner and under the same rules as the disposal of properties where DOTPF owns the underlying estate. This bill gives DOT&PF the necessary flexibility to complete these transactions which otherwise cannot happen under existing state law.

Ms. Weissler states that a casual reader of the statutes may be confused by how sections 1, 6, and 9 would affect DNR's permitting authorities. These sections, providing identical guidance in each of DOTPF's authorities, contain two sentences: The first sentence states that DOT&PF has primary authority to manage the surface estate of its state infrastructure facility. The second sentence states that DOT&PF, in the exercise of its primary management authority, can require terms and conditions for DNR authorized uses of the state's infrastructure. The bill contains no amendments or limitations to DNR's regulatory or permitting authority, so there should be no room for confusion whether DNR's permitting authorities were limited. These provisions should also make complete sense to the casual reader. If DNR intends to issue an authorization for the development of natural resources on a tract of state land where a highway or airport is located, DOT&PF should be allowed to condition the private development activities within the state right-of-ways to protect the state's infrastructure and the traveling public.

Ms. Weissler also expressed concerns regarding the Department's interpretation of the Constitution. However, The Constitution distinguishes between:

A. Transportation facilities and other infrastructure improvements (Art. VIII, Sec. 5);
B. State public domain land, which expressly excludes government purpose land (Art. VIII, Sec. 6), and
C. State land for legislatively designated areas, which may be withdrawn from the public domain (Art. VIII, Sec. 7).

Ms. Weissler's comments draw examples and analogies from DNR's management of land in the public domain and in legislatively designated areas (B&C above). However, DOT&PF land and facilities are governed by separate constitutional and statutory provisions (A above). To make the analogy that DOT&PF should manage its facilities for multiple uses, Ms. Weissler provides two examples: 1) Land classification under the Alaska Land Act, which is inapplicable to DOT&PF and its facilities; and, 2) The creation and management of a state park under a legislative designation, which is equally inapplicable to DOT&PF and its facilities. The Constitution's Article VIII, Sec. 5 and Titles 02, 19, and 35, and their companion federal laws and regulations, direct DOT&PF to construct, manage, and maintain the state's transportation infrastructure and public facilities to ensure the operation of the public infrastructure for the safety and convenience of the public. These mandates are quite different from DNR's mandate under the Alaska Land Act to manage the Constitution's Article VIII, Sec. 6 public domain land under the principles of multiple purpose use.

Ms. Weissler closes her comments with "The state will achieve better development when the two agencies work together with each representing their respective authorities and missions." This statement could not be truer—and is why the two agencies developed this bill. State law grants DOT&PF absolute authority over the management of the state's rights-of-way. State law also gives DNR absolute authority over the development of resources on state land. However, the law is completely silent on which agency takes the priority management position when these two

authorities overlap (e.g., whether a miner can develop a mining claim across a state highway or airport). The management of DOT&PF and DNR recognize the tension created by existing state law, and the wasted time and resources of both agencies trying to navigate these overlapping authorities. This bill resolves these problems, allowing the agencies to work harmoniously together with each fulfilling their respective missions.

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, P.E.
Deputy Commissioner