



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

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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) would like to take this opportunity to address the remaining comments in the North Slope Borough's (NSB) March 21, 2014 comments. In the days immediately after receiving the NSB's comments, DOT&PF and the Department of Natural Resources (DNR) worked through an agreement that would prioritize DNR's consideration of the NSB's municipal selection of the Franklin Bluffs and Happy Valley camps and airfields. With the NSB's approval, DOT&PF and DNR proposed the removal of the bill's Section 15 by committee substitutes for SB 211 and HB 371. While DOT&PF answered NSB's remaining comments in committee testimony, we recently noticed that no written response addressing the NSB's written concerns was provided. These responses correct the oversight of no formal, written responses.

- **Our primary concern is with Section 15 of the bill.**

Section 15 was removed from the bill in response to NSB's concerns. DNR has agreed to expeditiously consider the NSB's claim for municipal entitlement of the facilities at Franklin Bluffs and Happy Valley. DNR's decision on the NSB's municipal entitlement claim will also resolve DOT&PF's decades old competing request for the transfer, continued use and expansion of these facilities for maintenance stations and development as state airports.

- **Municipal airport operators may desire a statement of management authority similar to Section 1.**

The subject of the bill is state-owned rights-of-way. While it is a good idea to have clearly defined land management powers for municipal airport authorities, any such amendments would be located in the AS 29's municipal powers and duties (likely AS 29.35.620). This bill would be an improper vehicle for the clarification of municipal authorities.

- **Sections 2, 3, 4, and 5 broaden DOT&PF's powers over land disposal, and will exempt DOT&PF from the requirements of a DNR best interest determination.**

The bill's disposal provisions (Sections 2, 4, and 10) do not substantially modify DOT&PF's *existing* land disposal provisions. The three provisions have been rephrased for consistency with one another to provide consistent application of the DOT&PF's disposal laws and regulations across DOT&PF's three statutory authorities. The only significant modification to DOT&PF's disposal authority is in Section 11, where DOT&PF will be given the discretion to dispose former public domain land that is no longer necessary for the operation or maintenance of the state's infrastructure. Because DNR's governing laws and regulations are ill-suited for the disposal of remnant properties from modifications to state-owned infrastructure, allowing DOT&PF the discretion to dispose these properties under its authorities will save the agencies and the public time and money.

- **Sections 3 and 5 would allow DOT&PF to use gravel that may be contrary to local land use codes.**

Sections 3 and 5 would authorize DOT&PF to incorporate material sources into an airport or highway project upon a publicly noticed written determination that the materials are reasonably necessary for the project. The incorporation of any public domain land for a DOT&PF project—including any materials site—is only accomplished after a thorough public vetting and review by all regulatory agencies with jurisdiction over any aspect of the development. DOT&PF's projects are required by AS 35.30.020 to comply with municipal ordinances and local land use codes. Since sections 3 and 5 do not limit the application of AS 35.30.020, DOT&PF will remain required to comply with local land use codes.

- **Sections 6, 8, and 9 may cause inconsistencies with the Dalton Highway Master Plan and NSB land entitlement selections. These sections appear to provide eminent domain powers for one department of the State over another.**

Sections 6 and 9 respectively clarify DOT&PF's primary authority over its highway and public facility rights-of-way. These sections do not expand or otherwise modify any DOT&PF power in relation to any municipality but, rather, establish a DOT&PF right to condition DNR permitted activities in the state's rights-of-ways (e.g., mining, oil and gas exploration, etc.) to protect the state's infrastructure and the travelling public.

Section 8 authorizes DOT&PF to acquire state public domain land for incorporation into a highway project, upon DOT&PF's determination that the public domain land is reasonably necessary for a project. The "reasonably necessary" standard for the acquisition of state public domain land is similar to the standard of proof DOT&PF must show for the acquisition of private land, municipal land, and federal land. Thus, it is an accurate observation that these amendments would give DOT&PF similar authority, and would provide similar landowner protection, when compared to DOT&PF's other acquisition powers.

- **Section 10 appears to allow DOT&PF to determine that a sale of state land is in the public interest without public input.**

Section 10 is a modification of DOT&PF's authority to dispose no longer necessary public facilities. The standard for a DOT&PF disposal of property has always been, and will continue to be, based upon an engineering determination of whether the property continues to be necessary for the intended purpose of the infrastructure. In those instances where DOT&PF determines a public facility or public facility property is no longer necessary for its intended purpose, DOTPF issues its constitutionally required public notice of its determination (17 AAC 10.100(b)). With near exclusivity, DOT&PF disposes no longer necessary public facilities and public facility property to other government agencies for continued public use of the facility or land.

- **Section 13 appears to be inconsistent with NSB local land use code, and is void of public input on material sales.**

Section 13 exempts DOT&PF from DNR material sales contracting requirements, so that one state agency will no longer be contracting with and reimbursing another state agency. While it is true that there will be no public input on DOT&PF's use of state-owned material sites, the vast majority of these sites are currently operated by DOT&PF with DOT&PF being responsible for maintenance of and compliance with all environmental permits and authorizations. As for compliance with local land use codes, DOT&PF is required under AS 35.30.020 to comply with all municipal ordinances to the same extent as other landowners.

Nothing in the proposed bill will change DNR's Alaska Land Act authority to sell materials from state lands to private individuals and municipalities, 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. Under existing DNR processes, DNR consults with DOT&PF prior to selling materials to an individual or municipality from a DOT&PF operated materials site. Just as the situation is today, if a sale can be allowed, the material sales contracts will continue to be issued by DNR.

We hope these answers help clarify SB211/HB371. 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

CC: Office of the Governor  
Senator Donald Olson  
Representative Ben Nageak