

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 9, 2015

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Click Bishop

COMMITTEE CALENDAR

OVERVIEW: WETLANDS MITIGATION

- HEARD

SENATE BILL NO. 70

"An Act relating to exceptions from designation as a special purpose site under art. VIII, sec. 7 of the Constitution of the State of Alaska for portions of Denali State Park, Captain Cook State Recreation Area, Nancy Lake State Recreation Area, and Willow Creek State Recreation Area to allow leasing a right-of-way for a natural gas pipeline."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 7

Opposing the proposed designation of an Aleutian Islands National Marine Sanctuary.

- SCHEDULED BUT NOT HEARD

HOUSE JOINT RESOLUTION NO. 8

Urging the federal government to empower the state to protect the state's access to affordable and reliable electrical generation.

- SCHEDULED BUT NOT HEARD

HOUSE JOINT RESOLUTION NO. 6

Supporting the introduction and enactment of federal legislation acknowledging that the federal government is financially responsible under the Alaska Native Claims Settlement Act for the remediation of contaminated land subject to conveyance under the Act; urging the United States Department of the Interior to implement the six recommendations to identify and clean up the Alaska Native Claims Settlement Act lands in its 1998 report to the United States Congress; and urging the President of the United States and the United States Congress to remediate and make free from pollutants lands in the state conveyed under the Alaska Native Claims Settlement Act.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 70

SHORT TITLE: GAS PIPELINE RIGHT-OF-WAY; PARKS; REFUGES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/06/15	(S)	READ THE FIRST TIME - REFERRALS
03/06/15	(S)	RES, FIN
03/09/15	(S)	RES AT 3:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

SARA LONGAN, Executive Director
Office of Project Management and Permitting (OPMP)
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Presented overview of wetlands compensatory mitigation and DNR's efforts to better understand the federal decision making process. Evaluated the state's options to get more involved with wetlands mitigation.

BEN ELLIS, Director
Division of Parks and Outdoor Recreation
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Commented on SB 70.

DON PERRIN, Acting Coordinator
State Pipeline Coordinator's Office
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 70.

FRANK RICHARDS, Vice President
Engineering and Program Management
Alaska Gasline Development Corporation (AGDC)
Anchorage, Alaska

POSITION STATEMENT: Available to answer questions on SB 70.

MIKE THOMPSON, Environmental Regulatory and Lands Manager
Alaska Stand Alone Pipeline (ASAP)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on SB 70.

JOHN HUTCHINSON, Assistant Attorney General
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered legal questions regarding SB 70.

ACTION NARRATIVE

[3:30:31 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Costello, Coghill, Stoltze and Chair Giessel.

Overview: Wetland Mitigation

[3:31:00 PM](#)

CHAIR GIESSEL announced the first order of business to be the overview of wetlands mitigation in Alaska.

She recognized Senator Bishop in the audience.

[3:31:18 PM](#)

SENATOR MICCICHE joined the committee.

SARA LONGAN, Executive Director, Office of Project Management and Permitting (OPMP), Department of Natural Resources (DNR), Anchorage, Alaska, said she would be discussing wetlands compensatory mitigation and DNR's efforts to better understand

the federal decision making process as well as evaluate the state's options to get more involved with wetlands mitigation.

MS. LONGAN began with a general overview of federal regulations that require wetlands compensatory mitigation. The U.S. Army Corps of Engineers (USACE) is responsible for administering Section 404 of the Clean Water Act, one of the multiple and major permits necessary specifically to place fill into wetlands or waters of the United States. In 2008, the U.S. Environmental Protection Agency (EPA) developed regulations commonly referred to as the Wetlands Mitigation Rule. The ACE must comply with these regulations and the EPA maintains veto authority. While the ACE leads this effort, it is in full consultation and coordination with EPA and other federal agencies.

Project applicants go through great efforts to minimize impacts to wetlands and aquatic resources. They are required to produce aquatic site assessments (ASA), very recently referred to as wetlands functional analyses. This science is very critical, because the ACE uses it to determine the appropriate category of wetland impacts for purposes of assigning a mitigation ratio that can be translated into an in-lieu mitigation fee (ILF). She observed that the regulatory guidance particularly regarding the parameters necessary to fulfill these ASAs have been changing over the last few years and total mitigation costs are increasing.

MS. LONGAN said project applicants must offset the unavoidable impacts to wetlands and aquatic resources and that there are various ways to achieve those goals:

1. Restoration
2. Enhancement
3. Creation
4. Preservation

There are three mechanisms to do that:

1. Mitigation bank credits
2. In-lieu fee (ILF) program credits
3. Permittee-responsible mitigation, watershed approach

It is required and preferred that these three preferences and options are conducted in the same watershed where the impacts are taking place.

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SENATOR COSTELLO asked where in the process of the National Environmental Policy Act (NEPA) and environmental impact

statement (EIS) the discussion about the scope of mitigation happens.

MS. LONGAN answered late in the process at end of NEPA evaluations.

SENATOR STOLTZE asked for examples of enhancements. For example are the extensive culvert repairs done statewide for fish habitat and tsunami debris cleanup, which didn't even originate here, comparable mitigation measures?

MS. LONGAN answered that it's on a case by case basis under the ACE purview in consultation with the EPA. DNR is engaging now and more consistently participating in those conversations, because they tend to agree with him that culvert replacements or debris contamination site cleanup should qualify for wetlands compensatory mitigation.

SENATOR STOLTZE said he didn't see the nexus between the good idea and some type of action and asked if the state agency needs more assistance in engaging in the process. Is more coordination between the borough and state entities needed?

MS. LONGAN answered that her presentation would describe efforts under way at DNR to actually establish and seek its own approval from the ACE to run its own mitigation program.

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SENATOR STEDMAN joined the committee.

MS. LONGAN described a mitigation bank as a wetlands area that has been restored, established, enhanced or preserved then set aside to be used to offset unavoidable impacts. Upon approval, permittees purchase credits from the bank based on wetlands functions and number of acres of restored. The mitigation bank sponsor is responsible for the success of the mitigation plan. Offsite mitigation is allowed.

Under the in-lieu fee program (ILF), the permittee provides funds to an in-lieu fee mitigation sponsor (non-profit or public agency) that are used to build and maintain mitigation sites. The success of the mitigation plan relies upon the ILF sponsor and mitigation typically occurs "off-site." The difference is that mitigation occurs typically after a project is permitted.

SENATOR COGHILL said she didn't have to answer now, but the first thing that came to his mind was accountability for a mitigation sponsor.

MS. LONGAN said there is another option for a project applicant (the permittee) to develop and seek approval of their own mitigation plan. This can be done on-site or off-site. Simple arithmetic. The higher the mitigation number the larger the total mitigation costs.

She noted that OPMP is hearing mainly from the mining companies, but perhaps others are impacted, but since the implementation of the 2008 rule, permittee responsible is occurring much less often in Alaska.

She explained that the Mitigation Ratio is an aggregate index used to calculate the gain and loss of wetlands to be adjusted based on the functions and qualities of those wetlands. This is simple arithmetic: the higher the wetlands mitigation ratios are, the greater number of acres are necessary for offset purposes. Therefore, also, is the higher total mitigation cost. In Alaska, mitigations ratios typically range from 1:1 up to 3:1 depending on wetland category and type of mitigation. Ratios for preservation, for example, will be set differently compared to restoration or enhancement.

MS. LONGAN said some mitigation ratios are 10:1 and there is a list of factors that federal agencies may use to increase these mitigation ratios. That can include whether the wetlands being impacted or the aquatic resources are used to support a threatened or endangered species. If a federal agency deems those same resources as very rare, again there is a list of criteria that can offer them the opportunity to have higher mitigation ratios.

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SENATOR COGHILL said his understanding is that those are more subjective.

MS. LONGAN responded that this is one of the reasons that compelled DNR and OPMP to pay closer attention to how federal decisions were being made. That is why she can report that over the last year and a half, OPMP has gone through some pretty resource-intensive efforts to get more engaged with the federal agencies. They do have concerns when perhaps subjective federal decisions are made that are increasing these ratios as high as

10:1 or higher and want to understand what science is being used to make those determinations.

SENATOR COGHILL asked if somewhere along the line she would give them a criteria baseline for things the department would look at.

MS. LONGAN replied that they could do that, but it is early in the process.

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SENATOR COSTELLO asked where the authority came from to change the criteria. Was it from Congress or were federal agencies taking things into their own hands and providing for no voice from the state?

MS. LONGAN answered that the mitigation ratio criteria is actually listed in the 2008 federal rule.

SENATOR MICCICHE said Alaska has 174 million acres of wetlands and asked if Alaska's wetlands are treated differently than other states with less wetlands remaining.

MS. LONGAN replied that DNR's observation is no and explained that a 1994 federal report called out specific unique characteristics of Alaska that the federal agencies have not been taking into consideration as they have made recent mitigation decisions.

SENATOR STOLTZE asked if there is an index of formulas and ratios that one could look at.

MS. LONGAN replied that is precisely what DNR wants to understand better. They have looked at ratios used in other states in the Lower 48 and she will report on how they make those determinations as well as how they establish fees.

SENATOR STEDMAN said some constituents had complained about running into the mitigation issues when trying to develop small areas of four or five acres.

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SENATOR WIELECHOWSKI joined the committee.

[3:46:01 PM](#)

MS. LONGAN said she would discuss that, but first she wanted to describe how the 2008 mitigation rule was developed and why it

is difficult to implement in Alaska. When the current federal "No Net Loss Policy" - which states that where there is an impact there shall be no net loss of wetlands and aquatic resources - was being developed, Alaska was not experiencing a rapid decline of wetlands as was the case in the Lower 48.

The Alaska Wetlands Initiative compelled the federal agencies to produce a report in 1994 that described the unique characteristics of Alaska's wetlands. This report concluded that a flexible regulatory approach was necessary, emphasizing the "practicability" and "flexibility" of the regulatory program to reflect circumstances in Alaska. This initiative is not currently in effect.

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MS. LONGAN said Alaska has 174 million acres, 43 percent of its land mass, of wetlands. This means limited lands are available that would be eligible for wetland compensatory mitigation. It's difficult to comply with the rule, because wetlands can only qualify to be used for mitigation if there is an imminent threat to them. Because of our pristine nature and small inventory of previously disturbed wetlands, it is difficult to have enough wetland credits eligible and compliant with the rule. Other limiting factors unique to Alaska are that there is only one federally approved ILF compensatory mode mitigation program sponsor for projects proposed on the Arctic Slope that has a lot of oil and gas and resource development activities.

She said the ILF program sponsors must produce an "instrument," a report describing their methodologies in terms of how they are to manage their ILF program. This report is submitted to the ACE ultimately for approval. Some of the Alaska ILF programs will disclose what their cost per acre include. Some examples of cost per acre credits in Alaska can range from \$44,000 up to \$125,000 per acre, the larger number more typically seen in southeast portions of the state. These costs are established solely by the ILF program sponsor and they are driven by the type of wetland, the value, and the geographic area.

OPMP investigated what other ILF programs are like in the Lower 48 and readily admits that the costs are sometimes much smaller than what states like New Jersey, Florida, or others are charging. OPMP is hearing from the operators that collectively an increase of the mitigation ratios as well as significant cost per acre is burdensome in Alaska because of its large size. There is very little existing infrastructure in some regions of the state, so the proximal distance for project applicants to

get to their project site collectively with all the other factors, raise the chances that these mitigation costs will run the risk of making a once commercially viable project perhaps no longer economically feasible.

MS. LONGAN said there are three ILF programs and one is being proposed; there are five mitigation banks and four being proposed in Alaska.

3:50:02 PM

SENATOR COSTELLO mentioned that ConocoPhillips' Moose's Tooth project is being required to mitigate "travesty wells," which are solely the responsibility and cause of the federal government and asked if this is the first time a private company is being required to mitigate on federally owned land.

MS. LONGAN answered that it is the first case in OPMP's experience, but it was placed on hold as the Bureau of Land Management (BLM) is now undertaking the effort to develop an NPRA regional mitigation plan. Today she wanted to underscore that she is talking about a very specific regulatory function for wetlands compensatory mitigation. Equally important and what happens through the NEPA process is the capital "M" mitigation which means that project applicants are mitigating for all other impacts: from subsistence to wildlife and air quality. At Moose's Tooth, DNR saw those two and the wetlands compensatory mitigation were getting conjoined in a way that OPMP perhaps felt that some "double-dipping" was occurring. The BLM listened to this concern, but it's another reason why DNR is wanting to get more involved.

SENATOR MICCICHE asked if anyone had litigated the compensatory program as a taking on patented land anywhere in the U.S. before the Clean Water Act.

MS. LONGAN said she hadn't heard of that occurring, but she would look into it.

SENATOR STEDMAN asked for a list of properties in mitigation banks, because there is an interest in changing the status if they can. The area he represents is a rainforest and people don't have the capital to litigate this and the fee is viewed as extortion. He asked what happens to the private land owners who inadvertently breach this rule.

MS. LONGAN said she would investigate that issue further for him.

3:56:03 PM

SENATOR STEDMAN asked if Native corporation lands come under the 404 Permit process also.

MS. LONGAN answered yes. She explained that approximately a year and a half ago, OPMP was asked to creatively think about the problem and to identify goals for solutions. They asked themselves how DNR or anyone could get more involved with wetland mitigation. A limiting factor is that so few lands in Alaska are privately owned.

However, everyone is familiar with the fact that the state owns and manages a very large portfolio of acreage throughout the state and this may be an opportunity. They asked the ACE about suitability and implementation questions and they have been very supportive. In fact, they have been collaborating on identifying and developing an Alaska-specific wetland compensatory mitigation program.

According to the ACE, the requirements for DNR to develop a prospectus and submit it for approval to run a state-managed umbrella in lieu fee program (ILF). To do this, DNR must inventory its state lands with the best science and information available. This can be done using multi-layered screening criteria and geographic information system (GIS) audit developed in collaboration with mitigation specialists.

3:59:00 PM

She explained that the federal agencies have had a statewide interagency review team, the group that evaluates the existing ILF program and mitigation banks that are seeking approval. This is paid back significant dividends, because it has allowed OPMP, DNR and other state agencies a seat at the table when those conversations are being had.

As soon as OPMP was learning more about the compensatory wetlands mitigation process, they realized that although they are part of the NEPA conversation throughout, they never heard about the specific regulatory function making decisions about wetlands compensatory mitigation. She thanked the ACE and the BLM, because in this example OPMP suggested having the conversation as part of NEPA. That, in fact, occurred for the Greater Moose's Tooth project.

She said the state tries to partner with the federal government where it makes sense to develop a general permit. Companies have

been asking for more consistency in wetlands compensatory mitigation. Where this goal hasn't been achieved, at least the federal and state agencies are having the conversation.

A major part of seeking approval from the Corps of Engineers will be an inventory of state lands. A screen shot of ongoing efforts revealed DNR mapping using sophisticated tools in areas of the state where just a few years ago they weren't adequately mapped. This is a key part if the state is to be successful in seeking approval from the ACE to develop and ILF program.

SENATOR COGHILL asked if the federal government had been doing any GIS mapping on BLM and forestry lands.

MS. LONGAN replied that mapping is taking place among the federal agencies, particularly BLM, but she didn't know how much progress had been made on any particular parcel.

[4:01:18 PM](#)

SENATOR COGHILL asked if the wetland mitigation ratios on federal lands are more generous.

MS. LONGAN answered that as of about two years ago, OPMP didn't know the answer to that, and that is why state participation on the State Interagency Review Team is so important. Restoration projects take place on federal lands, but she thought that the mitigation uses private lands for preservation purposes and didn't know how much active mitigation banking was taking place on federal lands.

[4:06:00 PM](#)

She said the DNR and the state can help by offering options to wetlands compensatory mitigation. Things like the 2008 federal rule listing the advantages of having non-profit and government agencies act as third party mitigation sponsors is in the state's favor, because profit isn't driving the necessity for running these programs. Thirty-one other states are already involved in mitigation, 25 states run mitigation banks and 12 states run ILF programs.

She said that DEC has been taking advantage of grant opportunities and that EPA's wetland program development grant funding, although small, won't be enough to cover all of the efforts necessary for the state to seek approval to run an ILF program, but it's helpful. Qualified recipients can receive grant money to develop a comprehensive monitoring and assessment program, improve the effectiveness of compensatory mitigation,

or refine the protection of vulnerable wetlands and aquatic resources, very important principles to DNR, DEC and ADF&G. They feel they have a good sense of how this is impacting the larger scale resource development, but they want to know how it will impact the little guys.

SENATOR STEDMAN said he knows that two of his constituents aren't going to subdivide anymore, because it's not worth the headaches. He wanted the state to be the sole holder of all the mitigation banks and look at the feasibility of absorbing the current ones and to be involved in the payment program, too. If the federal government insists that it stays the way it was 10,000 years ago, so be it, but the state should be the one holding the land.

[4:09:45 PM](#)

MS. LONGAN responded that none of the Lower 48 programs are state-owned. Where the state was involved in the Lower 48 other privately-owned ILF or mitigation banks were very likely involved.

SENATOR COGHILL said that there was less than 2 percent private property in Alaska and he guessed the Native lands would have trust issues. When it comes to federal land, would that be put into private holdings and if they don't do that why can't the state keep the title under a wetland agreement?

MS. LONGAN felt confident that the state could raise that interest to the ACE that has been collaborating so far to help achieve those goals.

SENATOR COGHILL asked if the Corps had taken lands into mitigation outside of a watershed, because everything is "greenfield" in Alaska and staying within a single watershed area is going to be very difficult. Their own study might show that there has to be some flexibility.

SENATOR COSTELLO asked the status of the state's mapping efforts and the cost.

MS. LONGAN answered that to get approval to run an ILF program, the state would need two years of mapping information available, but if they continue on the path they are on, they could have a prospectus submitted to the Corps of Engineers within six to eight months.

SENATOR COSTELLO asked if that timeline is achievable in the current budget environment.

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MS. LONGAN answered that the funding that OPMP has had up to now has made the efforts to date possible. OPMP receives program receipt money and funds from outside sectors. They are doing well with this funding, but have not secured funding for the next fiscal year. The project applicants are the ones who have a predominant concern in terms of the increasing mitigation costs. She encouraged them to read the 1994 Wetland Initiative Report.

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SENATOR COGHILL said that he and Senator Bishop had been working together on looking for a way to encourage the state to be the recipient of lands in mitigation. However, the state should know what the federal government does with its lands before it asks to do things and asked the timeframe of understanding what the federal management is going to be doing.

MS. LONGAN answered she would get that information to him very quickly.

[4:17:18 PM](#)

SENATOR STEDMAN asked the cost for the Southeast Region, both public and private, if it's available.

MS. LONGAN answered that she would get those estimates for him.

CHAIR GIESSEL thanked Ms. Longan for her presentation

SB 70-GAS PIPELINE RIGHT-OF-WAY;PARKS;REFUGES

[4:18:45 PM](#)

CHAIR GIESSEL announced SB 70 to be up for consideration. She invited Mr. Ellis and Mr. Perrin to the table.

[4:19:34 PM](#)

BEN ELLIS, Director, Division of Parks and Outdoor Recreation, Department of Natural Resources (DNR), Juneau, Alaska, explained that SB 70 will allow a gasline to go through four Alaska state parks. He explained that when recreational land has been pulled out of the general state land the multipurpose use has been replaced by a specific use, in this case it would be recreation. Because of the difference between Title 38 lands (general state land administered by the Division of Mining, Land and Water) and

Title 41 land (state park lands) he does not have the ability to do any type of long-term lease on Title 41 land. The concept of title 41 is to lease for short periods of time of four or five years to allow a concession or something similar to occupy an area; Title 41 lands are not designed for long-term leasing that the right-of-way for a pipeline would need. This bill addresses that by allowing the four units mentioned to be used in a right-of-way situation while still being managed for park intent.

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DON PERRIN, Acting Coordinator, State Pipeline Coordinator's Office, Department of Natural Resources (DNR), said the intent of this bill is to allow for a pipeline corridor through Denali State Park and three other identified state recreational areas that are all under Title 41.

He said the State Pipeline Coordinator issued a 38.35 right-of-way (ROW) lease to the Alaska Gasline Development Corporation (AGDC) in 2011. Presently it is a dis-contiguous lease because of these Title 41 lands. This bill would allow them to apply the Right-of-Way Leasing Act and have a contiguous 38.35 lease through state lands.

He said the primary objective of the bill authorizes the lease under the Right-of-Way Leasing Act. It requires that the corridor be managed as park land and recreation areas until leased under 38.35 and then returned to park land and recreational areas upon termination of the lease. It also provides supplemental requirements to reserve traditional means of public access and minimizes the impact of the pipeline on specific values of the park and recreation areas. This means that the State Pipeline Coordinator's Office would work with the Division of Parks and Outdoor Recreation to formulate and establish stipulations and requirements of the lease that are intended to protect the park values of those areas. It also clarifies that it is in the DNR commissioner's power to delegate condemnation authority to a lessee that does not apply within these park area boundaries. In other words, they cannot condemn this land for a pipeline.

Finally, Mr. Perrin explained that SB 70 would require that the gas pipeline lease be issued before January 1, 2020.

MR. ELLIS explained that the bill is needed so there can be a right-of-way lease through the four state park units: Denali State Park and the recreational areas of Willow Creek, Nancy Lake, and Captain Cook State Park.

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MR. PERRIN said one might ask why this bill does not include the state game refuges. They believe that the 38.35 Right-of-Way Leasing Act does apply in those areas and therefore they were not included in the bill. Permitting for geotechnical and other field work that will support the final application is being conducted in those areas, as well. So, after discussion with the Department of Law, they didn't feel they needed to include the state game refuges. In regards to the two gasline projects, the ASAP and AKLNG, the corridor that would be created through this bill is basically what would be granted to AGDC upon review of their amended application.

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History:

In 2012 the Corps of Engineers finalized their EIS and the ROW was granted. It follows the DOTPF ROW along the Denali Highway, but because it was through Title 41 lands, the department determined the ROW Leasing Act didn't apply there.

In 2013, the AKLNG project came into being and the engineers for both projects began working together in terms of the geotechnical work needed for the ROW. This means core holes are being drilled to assess the underlying soils to come up with the best ROW. While it is a little early for AKLNG to finalize a ROW, they believe this corridor will suffice for both projects and any gasline project. Both projects are currently conducting field work along that corridor to gather information that would support an application at some point.

[4:28:57 PM](#)

MR. ELLIS said they had an organizational meeting with field workers and this Wednesday the first work will begin.

SENATOR WIELECHOWSKI asked how confident he is that this is the line the "Big Three" are building.

MR. PERRIN answered that their confidence level is based on the field work that is currently occurring. They won't know what the final alignment is until FERC has completed its process for AKLNG.

SENATOR WIELECHOWSKI asked if it's better to pass this now or to wait.

MR. PERRIN answered if they could pass it now, it is enough land to accommodate either project.

CHAIR GIESSEL said asked how much wiggle room there is if the line moves.

MR. PERRIN answered there is a significant amount of wiggle room, although the ASAP project could end up with something other than the line.

SENATOR WIELECHOWSKI asked how large the easement is.

[4:31:44 PM](#)

FRANK RICHARDS, Vice President, Engineering and Program Management, Alaska Gasline Development Corporation (AGDC), Anchorage, Alaska, invited Mike Thompson to answer it.

MIKE THOMPSON, Environmental Regulatory and Lands Manager, Alaska Stand Alone Pipeline (ASAP) Project, Anchorage, Alaska, answered that they are looking at 120 foot easement for both construction and operations and a 300 foot buffer on both sides; so a total of 750 feet. Any quarter section that touches that buffer within 300 feet of that buffer was incorporated into the corridor they are discussing right now. A quarter section is about 1320 feet by 1320 feet. This is a fairly significant buffer and ASAP's engineering team said it would meet their needs.

SENATOR COSTELLO reminded them of the Creamer's Field issue and asked what assurances the legislature has that the descriptions are correct.

[4:37:06 PM](#)

MR. ELLIS answered that this is the description that they feel assured with, but there may be modifications to it.

CHAIR GIESSEL asked Mr. Richards if these are accurate descriptions of these properties.

[4:38:20 PM](#)

MR. RICHARDS said the land descriptions in Section 1 actually came from AGDC. The reason they are comfortable with this is because it provides a sufficient amount of area to make modifications as they work with their partners, AKLNG, on a common alignment.

SENATOR WIELECHOWSKI asked how 750 feet compares to the TransAlaska Pipeline System (TAPS) buffer and if there would be public access through this corridor.

MR. ELLIS answered that they would envision working with the least impact to the area and manage that through stipulations, and it would still be open for people to cross.

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SENATOR MICCICHE pointed out that language on page 4, line 9, would reserve uses for typical use as opposed to leaving it up to ROW law.

SENATOR COSTELLO asked what changes Mr. Ellis was anticipating and how they related to HB 139.

MR. ELLIS replied that his earlier comment was more in a small sense of movement. In other words, the ROW line they see now will not be the final ROW line, but he was confident it will be within the 750 foot ROW easement that this would grant.

He said they began reviewing HB 139 on Friday and couldn't do a comparison at this time, but it will need to be done.

SENATOR STOLTZE asked if he thought it would have de minimis consequences for this project.

MR. ELLIS answered that one of the largest differences he could see offhand is that HB 139 includes refuges within the description. He would have to defer to the Alaska Department of Fish and Game or the Department of Law as to whether it needs to be in there.

MR. PERRIN added that HB 139 is still being reviewed, but it is exclusive to AGDC and the ASAP project and not a pipeline in general.

CHAIR GIESSEL said this bill would be held over and that information should be available for the next hearing. They are pretty concerned that parts won't be left out again.

[4:46:41 PM](#)

SENATOR WIELECHOWSKI asked if there were any impacts to hunting or the ability to use firearms.

MR. ELLIS answered that would definitely be a negative impact on hunting and using firearms near the corridor.

SENATOR WIELECHOWSKI asked if he saw any businesses being taken by eminent domain with passage of this bill.

MR. ELLIS answered no, but that is a question for the Department of Law.

[4:48:00 PM](#)

JOHN HUTCHINSON, Assistant Attorney General, Department of Law (DOL), Juneau, Alaska, said the final question about eminent domain is one for someone involved with the pipeline projects. There are several private inholdings within the state parks and the question is if that alignment go through a private holding. The bill requires the state to exercise eminent domain but it is not actually authorized in several of the parks; the state is required to purchase land rather than take it through eminent domain. It's unlikely that there will be any takings within the parks using eminent domain.

He also clarified that the corridor identified in this bill is not actually the final ROW; it is a corridor of land through which leasing would be authorized. The legislature would be giving back to DNR the power to authorize at least somewhere within this corridor the final construction corridor that Mr. Thompson was talking about, which would be some small segment within the legal description.

He said the Talerico bill takes a different approach in authorizing leasing throughout the park; there is no set corridor.

SENATOR WIELECHOWSKI asked which approach was preferable from a legal standpoint.

MR. HUTCHINSON answered that was a policy question. The legislature is authorized to open this land for leasing and the governor's bill takes a more minimalist approach in identifying a corridor within which a lease is authorized to be issued. The downside to that is that there is some uncertainty about where the pipeline will finally cross. The upside is that the entire park is not being opened to ROW leasing.

SENATOR COSTELLO said this sets a general guideline for the area, but would this legislation have to be replaced or changed at some point. Is it just a building block for the pipeline at which some point they will know the specific route?

MR. HUTCHINSON answered no; the legislature would not have to come back. This sets an area through which leasing is authorized for 10 years until January 1, 2020. The only reason the legislature would have to look at it again is if the pipeline is in a dramatically different place.

SENATOR COSTELLO asked if there is any practical difference between saying we know this is the area that could change and the Talerico blanket approach.

MR. HUTCHINSON answered that is a complicated question. One advantage in the governor's approach is if there was a challenge, the legislature had already looked at this particular corridor, which would limit review of that decision by the courts. A much broader bill would require lots of specific circumstances leaving it more open to challenge.

[4:54:19 PM](#)

SENATOR STOLTZE asked Mr. Ellis to define what some of the stakeholders are in this process from his division's standpoint.

MR. ELLIS answered that he had no discussions with stakeholders on this process so far, but during the EIS of a previous rendition meetings were held in Talkeetna, Trapper Creek and other places where individuals made comments. He is in the process of getting those comments. Alaska State Parks would consider stakeholders to be various user groups in the area, businesses and the MatSu Advisory Board.

SENATOR MICCICHE asked him to research whether firearms will be allowed on the ROW. It is open to traditional uses except in very specific cases like during construction.

[4:57:16 PM](#)

MR. ELLIS responded that his comment was about the construction stage.

MR. PERRIN added that through the remainder of the current ROW that exists (the 38.35 on state lands) the hunting analogy is the same. Folks access and hunt along those non-park lands and so the analogy would be the same in the park as outside the park. It will need to be clarified.

SENATOR MICCICHE pointed out that under 49 CFR 192 requires maintaining the ROW. So, actually there is improved access in many situations.

SENATOR WIELECHOWSKI asked if the improved access is going through wetland areas, would it be converted into an area that can be walked or driven over.

MR. ELLIS answered that it is premature to say, but the intent would be to use the "rails for trails" model where old railroad beds were turned into hiking or ATV trails. And some level of restoration must be looked at.

CHAIR GIESSEL said she would hold SB 70 for further review.

5:00:29 PM

Finding no further business to come before the committee, Chair Giessel adjourned the Senate Resources Committee meeting at 5:00 p.m.