

HB

371

<TARGET><BILL>HB 371</BILL><SUBJECT>HB
371</SUBJECT><COMM>HRES28</COMM></TARGET>

ALASKA STATE LEGISLATURE



Interim:
P.O. Box 109
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Session:
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Juneau, AK 99801-1182
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House Transportation Committee **Representative Peggy Wilson** **District 33**

HB 371 **Version C to Version O**

The differences in HB 371 Ver.C to Ver. O working draft are the deletion of Section 15. We received a letter from the North Slope Borough stating that portions of the Happy Valley and Franklin Bluff sites were part of the land selected by the borough for conveyance as part of the Borough's entitlement. The section that conveyed those sites to DOT has been deleted. Dot and DNR do not want this bill to interfere with that request.

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House Transportation Committee Representative Peggy Wilson District 33

HB 371 Sponsor Statement

“An act providing for the Department of Transportation and Public Facilities to hold the surface estate of certain state land; relating to the transfer of certain state land and materials from the Department of Natural Resources to the Department of Transportation and Public Facilities for the construction or maintenance of the state highway system, state airports, and state public building and facilities; relating to the lease or sale of certain marine or harbor facilities; relating to the lease or disposal by the Department of Transportation and Public Facilities of rights-of-way, property interests, or improvements that are no longer required; relating to the grant of certain easements over submerged state land to the federal government; relating to the transfer of certain maintenance stations on the James Dalton Highway to the Department of Transportation and Public Facilities; relating to the conveyance of land for right-of-way purposes from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities; providing for an effective date.”

HB 371 will clarify that the transfer of land or materials from the Department of Natural Resources to the Department of Transportation and Public Facilities for construction or maintenance of an airport, highway, or public facility is not a “disposal” of state land. This is a transfer of state land from multiple-use public domain land to solely government-use land as recognized in Article VIII, section 6 of the Constitution. In addition since the capital improvements have been funded by the legislature these transfers of property are presumed to be in the public’s interest. The bill will provide a procedural mechanism for interagency transfers of property. The bill also would provide for public notice of intended land transfers through the Alaska Online Public Notice System.

Also HB 371 will waive legislative approval of land conveyances from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities. This will reduce project development timelines by over a year when federal aid or other rules necessitate exclusive right-of-way access for a Department of Transportation and Public Facilities project.

HB 371 will authorize the Department of Natural Resources to lift the 55-year restriction on specific easements granted to the United States Forest Service, so that the United States Forest Service may reciprocate by lifting the 55-year restriction on easements granted to the Department of Transportation and Public Facilities for the construction of transportation and utility corridors through the Tongass National Forest.

This bill will allow the Department of Transportation and Public Facilities to efficiently administer the construction and maintenance programs for the state’s highways, airports, and public facilities consistent with the public interest. The language in the bill has been coordinated between DOT/PF and DNR.

STATE LANDS AND MATERIALS
HB 371

Primary Purpose

To clarify DOT&PF's authority as primary manager of the surface estate for highway, airport, and public facility lands under Article VIII, s. 6 of the Alaska Constitution by resolving ambiguity in State law regarding overlapping management authorities held by DOT&PF and DNR.

Provide Improved Transparency and Faster Response to the Public

- The Department of Transportation and Public Facilities (DOT&PF) is authorized to acquire, manage, and dispose of state right-of-way properties for transportation and public facility purposes.
- The Department of Natural Resources (DNR) is similarly authorized for the conservation and development of the state's natural resources.
- This bill clarifies the unintended ambiguity between state right-of-way and state lands.

Reduce Bureaucracy and Redundancy Between DOT&PF and DNR

- In order to legally construct a project, DOT&PF is often required to acquire land held by DNR.
- DNR must consider all potential uses of land necessary to complete a DOT&PF project prior to "disposal".
- This bill clarifies that the transfer of state land from DNR to DOT&PF is not a "disposal" of state land. Therefore, legislature requested DOT&PF projects are presumed to be in the public interest.

Swiftly Resolve Longstanding Title Ownership with the Public

- DOT&PF is required to dispose formerly owned DNR uneconomic remnant properties. These excess right-of-way properties are released back to neighboring land owners.
- Complicated transfer process between DOT&PF and DNR means neighboring property could wait years before reconstruction of property frontage is allowed. This bill will efficiently streamline reconstruction.
- This bill also allows DOT&PF to lease or dispose of unused or underutilized public facilities to the non-state-government entities that currently operate and maintain the properties.

Minimize the Material Acquisition Process Between DOT&PF and DNR

- This bill clears DOT&PF from the DNR contracting process to access sand, gravel, and rock for the construction or maintenance of state-owned infrastructure.
- The bill also clarifies that DOT&PF's use of state-owned material sites is not a "disposal" of state land.

Streamline Project Delivery Time

- Legislative approval regularly increases project delivery timelines by more than a year when federal-aid or other rules necessitate DOT&PF's exclusive right-of-way control.
- The bill waives legislative approval of land conveyances between the Alaska Railroad Corporation (ARRC) and DOT&PF.

Remove Easement Term Year Restrictions

- This bill will remove the US Forest Service (USFS) easement limitations (55 years) on DOT&PF's highway and utility easements.
- This will occur when DNR removes their log transfer facility easements (55 years) on the USFS.

Acquisition of Sites to Be Used as Maintenance Stations and Airstrips

- This bill transfers sites for future state-owned airports and facilities at the Dalton Highway's Franklin Bluffs and Happy Valley from DNR to DOT&PF.
- DOT&PF's need for these sites as maintenance stations and airstrips is increasing to support recent resource development activity in this corridor.

28-LS1545\O
Bullock
4/4/14

CS FOR HOUSE BILL NO. 371()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for the Department of Transportation and Public Facilities to hold**
2 **the surface estate of certain state land; relating to the transfer of certain state land and**
3 **materials; relating to the lease, sale, or disposal by the Department of Transportation**
4 **and Public Facilities of rights-of-way, property interests, or improvements; relating to**
5 **the term for certain easements or rights-of-way that are part of a reciprocal exchange**
6 **with the federal government; relating to the conveyance of land for right-of-way**
7 **purposes from the Alaska Railroad Corporation to the Department of Transportation**
8 **and Public Facilities; and providing for an effective date."**

9 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

10 *** Section 1. AS 02.15 is amended by adding a new section to article 2 to read:**

11 **Sec. 02.15.065. Surface estate of state airport land. The department has**
12 **primary authority to manage the surface estate of land and property interests acquired**

1 or held by the state for an airport, airport access road, or airport-related operations,
2 including land conveyed by the federal government under sec. 35 of the Alaska
3 Omnibus Act of 1959 (P.L. 86-70, 73 Stat. 141). In the exercise of that authority, the
4 department may require terms and conditions that are applicable to a proposed use of
5 the surface estate that may be authorized by the Department of Natural Resources in
6 the administration of the state program for the conservation and development of
7 natural resources.

8 * **Sec. 2.** AS 02.15.070(b) is repealed and reenacted to read:

9 (b) If the department determines that land, property interests, or improvements
10 are no longer necessary, the department shall notify the commissioner of natural
11 resources of the determination and may

12 (1) transfer the land, property interests, or improvements to the
13 Department of Natural Resources, if requested by the commissioner of natural
14 resources; or

15 (2) dispose of the land, property interests, or improvements by sale,
16 lease, vacation, or exchange, according to terms, standards, and conditions established
17 by the commissioner.

18 * **Sec. 3.** AS 02.15.070 is amended by adding a new subsection to read:

19 (c) If the department determines that a part of the state public domain is
20 reasonably necessary for an airport or as a source of materials for the construction or
21 maintenance of an airport, the department shall file with the Department of Natural
22 Resources a written determination and preliminary property plan identifying the
23 portion of or interest in the public domain land that the department reasonably needs,
24 subject to the following:

25 (1) the department shall provide public notice of the intended transfer
26 by posting the written determination and preliminary property plan on the Alaska
27 Online Public Notice System (AS 44.62.175);

28 (2) within four months after the filing, the Department of Natural
29 Resources shall transfer title to the surface estate to the department, subject to valid
30 existing rights; the transfer of land or materials under this subsection is not a disposal
31 of state land, and the transfer is presumed to be in the public interest;

1 (3) a transfer under this subsection vests control of the surface estate in
2 the department, including the right to extract or use sand, gravel, rock, timber, or other
3 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
4 develop or use the land for transportation, utility, and related purposes;

5 (4) within two years after the completion of construction or of the
6 opening of a materials site, the department shall prepare and record a record of survey
7 of the property received by the department.

8 * **Sec. 4.** AS 19.05.070(b) is repealed and reenacted to read:

9 (b) If the department determines that land, property interests, or improvements
10 are no longer necessary, the department shall notify the commissioner of natural
11 resources of the determination and may

12 (1) transfer the land, property interests, or improvements to the
13 Department of Natural Resources, if requested by the commissioner of natural
14 resources; or

15 (2) dispose of the land, property interests, or improvements by sale,
16 lease, vacation, or exchange, according to terms, standards, and conditions established
17 by the commissioner.

18 * **Sec. 5.** AS 19.05.080 is amended by adding a new subsection to read:

19 (b) If the department determines that a part of the state public domain is
20 reasonably necessary for the right-of-way of a highway or as a source of materials for
21 the construction or maintenance of a highway, the department shall file with the
22 Department of Natural Resources a written determination and preliminary right-of-
23 way plan identifying the portion of or interest in the public domain land that the
24 department reasonably needs, subject to the following:

25 (1) the department shall provide public notice of the intended transfer
26 by posting the written determination and preliminary right-of-way plan on the Alaska
27 Online Public Notice System (AS 44.62.175);

28 (2) within four months after the filing, the Department of Natural
29 Resources shall transfer title to the surface estate to the department, subject to valid
30 existing rights; the transfer of land or materials under this subsection is not a disposal
31 of state land, and the transfer is presumed to be in the public interest;

1 (3) a transfer under this subsection vests control of the surface estate in
2 the department, including the right to extract or use sand gravel, rock, timber, or other
3 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
4 develop or use the land for transportation, utility, and related purposes;

5 (4) within two years after the completion of construction or the
6 opening of a materials site, the department shall prepare and record a record of survey
7 of the property received by the department.

8 * **Sec. 6.** AS 19.05 is amended by adding a new section to article 2 to read:

9 **Sec. 19.05.124. Surface estate of state highway land.** The department has
10 primary authority to manage the surface estate of land and property interests acquired
11 or held by the state for the state highway system, including land conveyed by the
12 federal government under sec. 21 of the Alaska Omnibus Act of 1959 (P.L. 86-70, 73
13 Stat. 141), maintenance yards, materials sites, and other land and property interests
14 necessary for the operation of the state highway system. In the exercise of that
15 authority, the department may require terms and conditions that are applicable to a
16 proposed use of the surface estate that may be authorized by the Department of
17 Natural Resources in the administration of the state program for the conservation and
18 development of natural resources.

19 * **Sec. 7.** AS 35.10.120 is amended to read:

20 **Sec. 35.10.120. Lease or sale of [MARINE OR] harbor facilities.** The
21 department may lease for a period up to 50 years or may sell for a nominal sum to a
22 municipality [AN INCORPORATED CITY, PUBLIC UTILITY DISTRICT,] or
23 other incorporated area [MARINE OR] harbor facilities constructed or rebuilt with
24 territorial funds or state funds or with territorial or state and federal matching funds.
25 The intent of this section is to allow a municipality [CITIES, PUBLIC UTILITY
26 DISTRICTS, AND OTHER INCORPORATED AREAS] to lease or purchase a
27 [MARINE OR] harbor facility [FACILITIES] so that the municipality [THEY] may
28 enforce municipal ordinances on the harbor facility [THEM] and legally assess fees
29 to meet maintenance costs.

30 * **Sec. 8.** AS 35.20.010 is amended by adding a new subsection to read:

31 (b) If the department determines that a part of the state public domain is

1 reasonably necessary for a public building or public facility or as a source of materials
2 for the construction or maintenance of a building or facility, the department shall file
3 with the Department of Natural Resources a written determination and preliminary site
4 plan showing the portion of or interest in the public domain land that the department
5 reasonably needs, subject to the following:

6 (1) the department shall provide public notice of the intended transfer
7 by posting the written determination and preliminary site plan on the Alaska Online
8 Public Notice System (AS 44.62.175);

9 (2) within four months after the filing, the Department of Natural
10 Resources shall transfer title to the surface estate to the department, subject to valid
11 existing rights; the transfer of land or materials under this subsection is not a disposal
12 of state land, and the transfer is presumed to be in the public interest;

13 (3) a transfer under this subsection vests control of the surface estate in
14 the department, including the right to extract or use sand, gravel, rock, timber, or other
15 construction materials, and the right to tunnel, ditch, contour, excavate, or otherwise
16 develop or use the land for a public building or public facility;

17 (4) within two years after the completion of construction or the
18 opening of a materials site, the department shall prepare and record a record of survey
19 of the property received by the department.

20 * **Sec. 9.** AS 35.20 is amended by adding a new section to read:

21 **Sec. 35.20.015. Surface estate of public facility land.** The department has
22 primary authority to manage the surface estate of land and property interests acquired
23 or held by the state for public buildings and public facilities owned or controlled by
24 the department. In the exercise of that authority, the department may require terms and
25 conditions that are applicable to a proposed use of the surface estate that may be
26 authorized by the Department of Natural Resources in the administration of the state
27 program for the conservation and development of natural resources.

28 * **Sec. 10.** AS 35.20.070 is repealed and reenacted to read:

29 **Sec. 35.20.070. Leasing and disposing of land and property interests.** If the
30 department determines that land, property interests, or improvements are no longer
31 necessary, the department shall notify the commissioner of natural resources of the

1 determination and may

2 (1) transfer the land, property interests, or improvements to the
3 Department of Natural Resources, if requested by the commissioner of natural
4 resources; or

5 (2) dispose of the land, property interests, or improvements by sale,
6 lease, vacation, or exchange, according to terms, standards, and conditions established
7 by the commissioner.

8 * Sec. 11. AS 38.05.030(b) is amended to read:

9 (b) The provisions of this chapter do not apply to a [ANY] power, duty, or
10 authority now or in the future granted to the Department of Transportation and Public
11 Facilities in the name of the state, to acquire, use, lease, dispose of, or exchange real
12 property, or any interest in real property or to a transfer of land under
13 AS 02.15.070(c), AS 19.05.080(b), or AS 35.20.010(b). Land transferred
14 [ASSIGNED] by the division of lands to the Department of Transportation and Public
15 Facilities may [SHALL] be returned to [THE MANAGEMENT OF] the division of
16 lands when the land [IT] is no longer needed for the purposes transferred
17 [ASSIGNED].

18 * Sec. 12. AS 38.05.030(d) is amended to read:

19 (d) The [EXCEPT FOR LAND THAT IS REQUIRED TO BE RETURNED
20 TO THE DEPARTMENT UNDER (b) OF THIS SECTION, THE] Department of
21 Transportation and Public Facilities may dispose of real property acquired [BY IT]
22 under AS 02.15.065, 02.15.070, AS 19.05.040(1), (2), and (9), 19.05.080 - 19.05.124,
23 AS 35.05.040(1), (2), and (6) [AS 02.15.070, AS 19.05.040(1) AND (2), 19.05.080 -
24 19.05.120, AS 35.05.040(1) AND (2)], and AS 35.20.010 - 35.20.050. Land conveyed
25 under this section to a municipality for less than fair market value shall be credited
26 against the municipality's entitlement under AS 29.65.

27 * Sec. 13. AS 38.05.030 is amended by adding a new subsection to read:

28 (h) Notwithstanding the provisions in AS 38.05.550 - 38.05.565, extraction
29 and use of materials from sources and sites owned by the state is not a disposal of
30 materials when used for the construction or maintenance of an airport, highway, or
31 public facility owned by the state. The department may not collect payments, set time

1 limitations, or otherwise restrict the Department of Transportation and Public
2 Facilities from access to a source of materials and a site owned by the state.

3 * **Sec. 14.** AS 42.40.285 is amended to read:

4 **Sec. 42.40.285. Legislative approval required.** Unless the legislature
5 approves the action by law, the corporation may not

6 (1) exchange, donate, sell, or otherwise convey its entire interest in
7 land to an entity other than the Department of Transportation and Public
8 Facilities for state right-of-way purposes;

9 (2) issue bonds;

10 (3) extend railroad lines; this paragraph does not apply to a spur,
11 industrial, team, switching, or side track;

12 (4) lease land for a period in excess of 95 years unless the corporation
13 reserves the right to terminate the lease if the land is needed for railroad purposes;

14 (5) apply for or accept a grant of federal land within a municipality;
15 before approving an action under this paragraph, the legislature must determine that
16 the federal land is required for essential railroad purposes; this paragraph does not
17 apply to the application for or acceptance of a grant of federal land associated with

18 (A) the Anchorage-Wasilla line change project on Elmendorf
19 Air Force Base and Fort Richardson;

20 (B) the Fairbanks intermodal rail yard expansion project;

21 (C) a conveyance of rail properties of the Alaska Railroad
22 under the original Alaska Railroad Transfer Act of 1982 as set out in Title VI,
23 P.L. 97-468; in this subparagraph, "rail properties of the Alaska Railroad" has
24 the meaning given in 45 U.S.C. 1202(10).

25 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **TERM OF CERTAIN EASEMENTS TO IMPLEMENT A RECIPROCAL**
28 **EXCHANGE.** The easements identified on the map numbered 92337 and dated June 15,
29 2005, and that are part of the reciprocal exchange of easements or rights-of-way and
30 easements enacted into federal law under 119 Stat. 1177, may have a term of years for a
31 period of more than 55 years if the commissioner of natural resources determines the length of

- 1 the term to be in the best interest of the state.
- 2 * **Sec. 16.** This Act takes effect immediately under AS 01.10.070(c).

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HB 371 Sectional Analysis

Sec. 1, 6 & 9. These sections are identical in form and resolve an ambiguity in state law that vests DOT&PF with authority to hold and manage airports (AS 02), highways (AS 19), public facilities (AS 35), and vests DNR with authority to hold and manage state lands (AS 38). These sections clarify that DOT&PF has primary authority to manage the surface estate of its facilities; DNR retains its authority to administer its statutory authorities on highway, airport, and public facility land, upon DOT&PF terms and conditions to protect the state's infrastructure.

Sec. 2, 4 & 10. These sections are identical in form and provide uniform language across all of DOT&PF's statutory authorities for the disposal of excess land and property interests for airports (AS 02), highways (AS 19) and public facilities (AS 35). Upon a DOT&PF determination that lands or property interests are excess to its needs, DOT&PF shall notify DNR to allow the transfer of excess lands to be used for other public purposes. DOT&PF retains its current authority to dispose excess property and improvements according to the terms and conditions established by the DOT&PF commissioner.

Sec. 3, 5 & 8. These sections are identical in form and establish a process for the transfer of state-owned public domain land to DOT&PF for the construction or maintenance of state-owned airports (AS 02), highways (AS 19) and public facilities (AS 35). Within four months of DOT&PF's written determination that public domain land is reasonably necessary for a DOT&PF facility, DNR must transfer title to the surface estate of the identified property. The public receives notice of the intended transfer of state land by posting of DOT&PF's written determination and property plans. These sections clarify that a transfer of land from DNR to DOT&PF is not a "disposal" of state land and that the transfer of state property for the construction or maintenance of the state's infrastructure is presumed to be in the public interest.

Sec. 7. This section updates the terminology used in AS 35.10.120 to use the more inclusive term "municipality" when referencing entities eligible for sale or lease of state-owned harbor facilities

Sec. 11. This section amends DOT&PF's exemption from the Alaska Land Act to specifically exempt interagency transfers of land, authorized under sections 3, 5 & 8 of the bill, from the

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Alaska Land Act's requirements for the disposal of state land. Additionally, this section makes the return of former public domain to DNR permissive, which will provide more flexibility and efficiency in DOT&PF's management of its rights-of-ways.

Sec. 12. This section amends AS 38.05.030(d) to expand DOT&PF's authority to dispose property excess to its needs to include property that was formerly held in the state's public domain.

Sec. 13. This section amends A.S. 38.05.030 to allow DOT&PF to use state-owned material sites without payment and without term or quantity limitations. This will eliminate a recurring administrative burden on DOT&PF and DNR that currently requires the preparation of material sales contracts that result in continuous renewal to extend the term of the contract or allow for additional quantity.

Sec. 14. This section amends A.S. 42.40.285 to eliminate the requirement that the legislature approve the sale of fee interest in land held by the Alaska Railroad Corporation to DOT&PF. This requirement currently can add one to two years to the land acquisition process, which we believe to be an unintended consequence of the existing statute language.

Sec. 15. This section transfers the surface estate of certain lands from DNR to DOT&PF for the Happy Valley and Franklin Bluffs maintenance stations and airstrips. The lands are necessary for the maintenance and operation of the Dalton Highway and are becoming increasingly important with the recent resource development proposals in this corridor. The proposed language will not affect licenses or permits issued by DNR for use of these properties and will provide for the existing authorizations to be incorporated into DOT&PF issued permits and licenses under the rural airport leasing program.

Sec.16. This section allows DNR to remove the term of year restriction from the reciprocal easements exchanged between the state and federal governments in SAFETEA-LU § 4407. The federal government will be able to remove its 55-year limitation on the highway and utility easements issued to DOTPF from the U.S. Forest Service, once the DNR 55-year limitations are removed from the log transfer facility easements over state submerged lands that were issued to the U.S. Forest Service.

Sec.17. This section provides for an effective date.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 371(TRA)
Fiscal Note Number: 1
(H) Publish Date: 3/21/14

Identifier: HB371-DNR-MLW-3-10-14
Title: STATE LAND AND MATERIALS
Sponsor: TRANSPORTATION
Requester: HTRA

Department: Department of Natural Resources
Appropriation: Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2014) cost: 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 (separate capital appropriation required)
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Brent Goodrum, Director	Phone:	(907)269-8600
Division:	Mining, Land and Water	Date:	03/10/2014 12:00 PM
Approved By:	Joe Balash, Commissioner	Date:	03/10/14
Agency:	Department of Natural Resources		

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 371(TRA)

Analysis

HB 371 confers upon the Department of Transportation & Public Facilities (DOT&PF) rather than the Department of Natural Resources (DNR) the primary authority to manage the surface estate of land and property interests acquired or held by the state for airports, highways and public facilities.

The bill clarifies that DNR retains existing authority to administer its authorities and responsibilities under relevant statutes to administer the state program for the conservation and development of natural resources, subject to terms and conditions required by DOT&PF that are applicable to the proposed use of the surface estate.

DOT&PF will have to file with DNR a written determination and preliminary property plans identifying the portion of the public domain or interest therein that DOT&PF finds necessary for airports, highways and public facilities, or as a material source for the construction or maintenance of airports, highways and public facilities. DNR would then be required to transfer fee title to the surface estate, subject to valid existing rights, to DOT&PF within four months from the request to DNR. The section specifies that transfer is not a disposal of state land and presumed to be in the public interest and therefore DNR will not be required to issue decision under AS 38.05.035 or public notice under AS 38.05.945. DNR would retain its ability under its statutory authorities to issue authorizations on, and manage some interests on, lands conveyed to DOT&PF.

The bill also gives DOT&PF the authority to sell or otherwise dispose of lands held by DOT&PF by sale, lease, vacation or exchange when it determines the lands are no longer necessary to its needs. The bill gives DOT&PF authority to transfer the lands to DNR for state management or disposal.

DNR may not charge DOT&PF for material, set time limitations, or otherwise restrict DOT&PF from access to material sources and sites owned by the state.

This bill stipulates that the surface estate to the access roads, camps, and airstrips at Franklin Bluffs and Happy Valley on the James Dalton Highway are transferred by DNR to DOT&PF. The bill stipulates that the transfer of those properties to DOT&PF does not affect or otherwise alter current licenses and permits issued by the DNR for use of those properties. The bill further stipulates that after January 1, 2015, the DOT&PF shall accept and begin to process permit and license applications through its rural airport permitting program for an activity currently authorized by permit or license by the DNR and normally permitted through rural airport permitting authorities.

Lastly, the bill authorizes the commissioner of DNR to determine the length of term of the easements granted to the USFS for longer than 55 years if determined to be in the best interest of the state. It also states that easements over submerged lands shown on map 92337 as part of the reciprocal exchange of rights of way in federal law 119 Stat. 117 are granted to the USFS.

DNR believes that the requirements of this bill can be accommodated under the state's existing budget allocations.

Fiscal Note

State of Alaska
2014 Legislative Session

Bill Version: CSHB 371(TRA)
Fiscal Note Number: 2
(H) Publish Date: 3/21/14

Identifier: HB371-DOT-SDES-3-11-2014
Title: STATE LAND AND MATERIALS
Sponsor: TRANSPORTATION
Requester: House Transportation Committee

Department: Department of Transportation and Public Facilities
Appropriation: Design, Engineering and Construction
Allocation: Statewide Design and Engineering Services
OMB Component Number: 2357

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2014) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2015) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? **Yes**
If yes, by what date are the regulations to be adopted, amended or repealed? **12/31/15**

Why this fiscal note differs from previous version:

Initial version.

Prepared By:	Connie McKenzie, Special Assistant	Phone: (907)465-4772
Division:	Office of the Commissioner	Date: 03/07/2014 02:00 PM
Approved By:	Mary P. Siroky, Director Administrative Services	Date: 03/17/14
Agency:	Department of Transportation and Public Facilities	

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. CSHB 371(TRA)

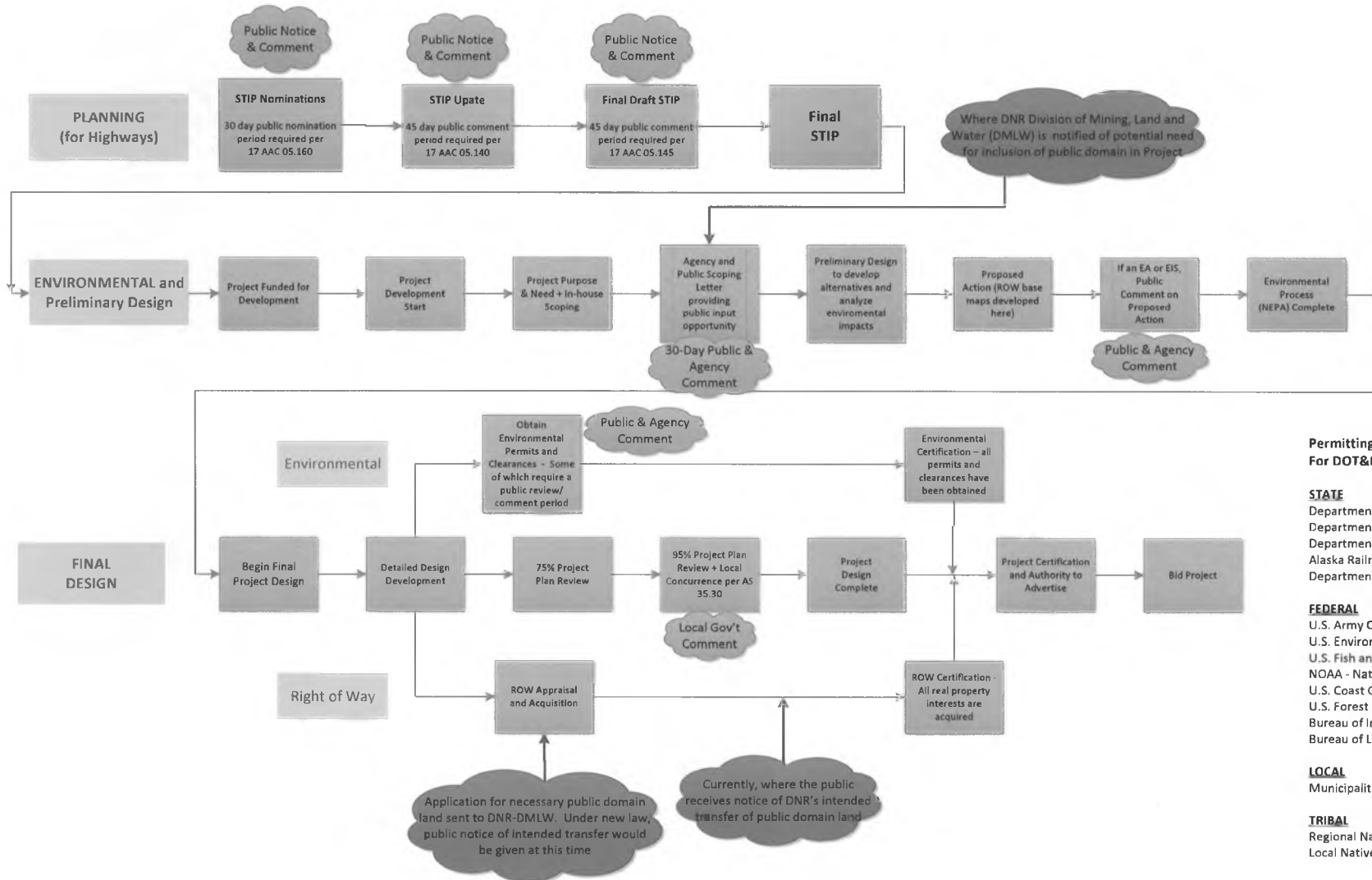
Analysis

This bill clarifies that the transfer of state land from the Department of Natural Resources to the Department of Transportation and Public Facilities, for use in the construction or maintenance of the state's public-owned infrastructure, is not a "disposal" of state land. The bill will also remove the automatic reversionary interest in transferred state lands and allow the Department to timely close out its construction projects by disposing any excess remnant parcels. The bill also seeks to reduce the Alaska Railroad Corporation's requirement for legislative approval to transfer interests in land for State highway purposes to the Department of Transportation and Public Facilities. Further, the bill seeks to allow for a term of more than 55 years for easements over certain submerged lands that are part of the reciprocal exchange of rights-of-way and easements enacted into federal law.

This change to statute will save the department on the cost of constuction materials. The department does not anticipate any negative fiscal impact from this legislation.

TYPICAL DOT&PF PROJECT DEVELOPMENT PROCESS (FEDERALLY FUNDED)

Note: the public process for community determination of need for infrastructure improvements, and legislative process for the inclusion of projects in the state capital budget are not shown



Permitting and Authorizing Agencies For DOT&PF Project Development:

- STATE**
- Department of Environmental Conservation
 - Department of Fish and Game
 - Department of Natural Resources
 - Alaska Railroad Corporation
 - Department of Commerce, C&ED

- FEDERAL**
- U.S. Army Corps of Engineers
 - U.S. Environmental Protection Agency
 - U.S. Fish and Wildlife
 - NOAA - National Marine Fisheries
 - U.S. Coast Guard
 - U.S. Forest Service
 - Bureau of Indian Affairs
 - Bureau of Land Management

- LOCAL**
- Municipalities (with local planning authority)

- TRIBAL**
- Regional Native Corporation
 - Local Native Tribes

Permitting and Authorizing Agencies for DOT&PF Project Development

Department or Agency	Coordination Issue(s)
STATE	
Alaska Railroad Corporation	<ul style="list-style-type: none"> • At-grade intersections or crossings over/under railroad facilities • Shared or impacted right of ways for miles of our corridors
Commerce, Community, & Economic Development	<ul style="list-style-type: none"> • Community Impacts in unorganized Boroughs • Floodplain impacts
Environmental Conservation	<ul style="list-style-type: none"> • Water & sewer systems • Stormwater systems (drainage off highways) • TMDLs (pollutant loads into impaired waters) • Contaminated soils & hazardous waste • Air quality – CO, PM-2.5 and PM-10
Fish and Game	<ul style="list-style-type: none"> • Fish Habitat (Title 16) permits
Natural Resources	<ul style="list-style-type: none"> • Acquisition of state land for ROW • Tidelands permits • Tidelands lease • Land use permits • Historic resources (SHPO) • Material sites • Invasive plants • 4(f)/6(f) lands – parks, recreation areas, waterfowl/game refuges, and historic sites
FEDERAL	
Bureau of Indian Affairs	Native Allotments
Bureau of Land Management	4(f)/6(f) lands – parks, recreation areas, waterfowl/game refuges, and historic sites
Federal Aviation Administration	<ul style="list-style-type: none"> • Airspaces at/near airports • Noise/Land Use
National Park Service	4(f)/6(f) lands – parks, recreation areas, waterfowl/game refuges, and historic sites
National Marine Fisheries Service - NOAA	<ul style="list-style-type: none"> • Threatened and endangered species • Marine mammal protection • Essential fish habitat
U.S. Coast Guard	<ul style="list-style-type: none"> • New construction or reconstruction of bridges or structures over waterways • Navigational aids • Floodplain consultation • Effects to navigable water bodies of the U.S.
U.S. Army Corps of Engineers	<ul style="list-style-type: none"> • Section 10 Permits – Work in navigable waters • Section 103 Permits – Disposal of dredged materials in the ocean • Section 404 Permits – Excavation and fill into waters of the U.S., including wetlands

U.S. Environmental Protection Agency	<ul style="list-style-type: none"> • Clean Water Act • Oversight of DEC delegated authorities
U.S. Fish and Wildlife	<ul style="list-style-type: none"> • Threatened and Endangered species • Bald and Golden eagles • Migratory bird habitat • Routes through federal refuges
U.S. Forest Service	<ul style="list-style-type: none"> • Acquisition of federal land for ROW • 4(f)/6(f) lands – parks, recreation areas, waterfowl/game refuges, and historic sites
U.S. Park Service	4(f)/6(f) lands – National Historic Landmarks parks, recreation areas, waterfowl/game refuges, and historic sites

LOCAL

Municipalities (with local planning authority)	Consistency with local planning and ordinances
--	--

TRIBAL

Regional Native Corporation	Tribal Consultation
Local Native Tribes	Tribal Consultation



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and Public Facilities

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March 13, 2014

The Honorable Representative Wilson
Chair, House Transportation Committee
Alaska State Capitol, Room 406
Juneau, Alaska 99801

Dear Representative Wilson:

In response to questions pertaining to HB 371 posed by the House Transportation Committee members on March 11, 2014, the following information is provided:

- **How will the Department of Transportation & Public Facilities (DOT&PF) protect the interest of the private sector using material sites?**

Section 13 exempts DOT&PF from the Department of Natural Resources' (DNR) requirements for materials sales contracts; however, it does not limit DNR's authority to sell materials to the private sector.

Private contractors working under a DOT&PF construction contract will be able to submit lower bids, since they will no longer have to pay DNR for state-owned materials. The reduced costs to the private contractors will be shared equally as each of the bidders can be assured of equal access to state-owned materials sites.

Impacts to privately owned materials sites should be negligible because material hauling distances have the greatest effects on contractor's cost of materials. When faced with a choice of purchasing materials from a site that is located near a project, or hauling free materials to a project location, a contractor will likely choose to reduce its overall costs by reducing its hauling distances.

- **Would DNR have first right of refusal on land disposals by DOT&PF?**

No. DOT&PF's current disposal authority (at AS 19.05.070(a)) provides preference right to the adjacent property owners for disposals of less-than-marketable sized remnant parcels. When a marketable sized parcel becomes excess, DNR is notified of the available parcel, and that parcel will be transferred to DNR at DNR's request.

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Under DOT&PF's current and amended AS 19.05.070(b), and existing regulation (17 AAC 10.110), DOT&PF may competitively sell a marketable-sized parcel of excess property if the parcel is not accepted by another public agency or purchased by the adjoining land owner.

- **Should there be flexibility allowing the commissioner of DOT&PF to determine how to dispose of land acquired through condemnation?**

Section 10 of the bill is designed to allow the DOT&PF commissioner the same degree of discretion in the disposal of public facility land acquired through condemnation as the commissioner currently has with regard to disposal of excess transportation properties. The current AS 35.20.070 requires title to public facility land acquired through condemnation to be returned to the person, heirs, or assigns who formerly owned the property. Because of the mobile nature of people today, AS 35's "heirs or assigns" rule has unintended consequences; as an example: For many years the Council of Athabaskan Tribal Governments (CATG) operated a community health services clinic out of a DOT&PF-owned building. The CATG desired to own the land and building; the state had an equal desire to dispose of the property to the tribal government entity. Even though fair market value was paid by DOT&PF to the former land owner when the state acquired the property—and DOT&PF owns the parcel free and clear—under AS 35.20.070 DOT&PF could not dispose of this property to the tribal entity for a beneficial public use because the entity is not an heir or an assign of the original owner. In this Fort Yukon situation, the heirs and assigns could not be located and in order to allow the tribe to continue using the facility as a health clinic DOT&PF had to continue to hold the property--a result neither the tribal government nor DOT&PF wanted.

By aligning Title 35's disposal authority with DOT&PF's Title 02 and Title 19 disposal authorities, the adjoining land owner has a preference right to the disposal of a remnant property; the adjoining land owner is the likely former owner or the success in interest to the former owner. For all practical purposes, the adjoining land owner is a more appropriate recipient of formerly condemned land.

- **Could DOT&PF lease land from the Alaska Railroad Corporation (ARRC), rather than ARRC selling land to DOT&PF?**

The short answer is that while leasing land from ARRC may benefit their bottom line, it would not represent a good long range policy for the management, operation and funding of DOT&PF facilities. Our federal funding agencies require that any lease for a federal aid facility provide at least a 20-year term (Federal Aviation Administration) or for the design life of the project (Federal Highway Administration). Unless the state can prioritize and design another federal-aid project at the end of each lease term, lease extensions would have to be negotiated and secured at the end of each lease term using state funds. Here are examples of ARRC land being incorporated into DOT&PF projects using the two acquisition vehicles:

- Highway Example: DOT&PF acquired a fee interest in Alaska Railroad land for the recently completed Illinois Street project in Fairbanks. ARRC was compensated almost \$1.4 million for a fee interest in their property. Almost \$800,000 was paid for fee title to the existing Illinois Street and adjoining streets that had been in public use for almost 100 years within the railroad right-of-way. There is little expectation that public use will cease in the next 100 years.
- Airport Example: DOT&PF currently leases land for most of the Healy River airport from the Alaska Railroad in a 30 year lease that terminates in 2017. In 2010 the appraised value for fee title was \$320,000 and we expect the negotiated compensation for the 30-year leasehold interest to be

higher. As state funds have not been available to extend the lease, we are attempting to establish a federal aid project prior to the end of the lease term. Leasing in general requires a continuing administrative burden to comply with the terms of the lease. Such terms include obtaining approval from ARRC for any work on the state facility costing more than \$50,000.

When transfer of title for a portion of ARRC property is necessary for a DOT&PF project, ARRC suffers negligible operational impacts. ARRC's operations are fully permissible within a DOT managed facility.

- **How much time will be saved by DOT&PF with this legislation?**

DOT&PF can say with absolute certainty that acquisition and disposal of public domain lands consumes far more time and energy as compared to other public or private properties. This bill could cut years to decades off the time it takes an adjoining property holder to receive remnant properties after DOT&PF completes a construction project. The bill will also reduce by months to a year the processing time to incorporate public domain land into a DOT&PF construction project. Additionally, by separating the currently duplicative authorities the bill will save countless staff hours currently spent by both agencies processing interagency property transfers.

- Land Disposals: DOT&PF can typically complete an excess property disposal of its lands in six to ten months, including preparation of a title report, appraisal, public notice, agency review, preparation of a decisional document and execution of conveyance documents. Currently, DOT&PF must allow DNR to dispose of excess former public domain land, which takes years to decades to complete under the current statutes. The combination of primary authority for the surface estate in Sections 1, 6 & 9 and the uniform disposal language under Sections 2, 4 & 10 will allow DOT&PF to efficiently close out its projects by disposing the former public domain land, which proves difficult or impossible under DNR authorities.
- Land Acquisition/Material Sales: Acquisition of necessary public domain land usually takes all the available time between DOT&PF's submittal of preliminary right-of-way drawings to DNR until DOT&PF's bidding documents are ready to be issued—regularly several months to a couple of years. With enough effort by DOT&PF, DNR will deliver rights to the necessary property prior to the state signing a contract for construction. Backlogs for processing applications for material sales contracts with DNR consume nearly the same amount of time, and DNR authorizations are usually delivered just prior to DOT&PF issuing construction contracts. The current bill proposes a 4 month limit for DNR to transfer title for airport, highway and public facility properties. Access to material sites would require coordination with DNR but little administrative processing.
- Legislative approval for fee conveyance of ARRC land: Our experience suggests that this provision could remove 1 to 2 years from the project development process.
- **DOT&PF has the ability to dispose of land, would DOT&PF take in revenue from the land sale?**

The proposed amendments to DOT&PF disposal authorities (Section 2-airports; Section 4-highways; and Section 10-public facilities) do not modify the state and federal statutes and regulations that govern the use of proceeds from the disposal of excess property from the state's infrastructure. DOT&PF is authorized to receive the proceeds for disposal of excess property, but its authority to spend those proceeds is very limited by state and federal laws.

In rough summary: Proceeds from the disposal of airport property must be used for the improvement, maintenance, or operation of the airport where land was disposed. If the disposal of an excess highway property occurs in the context of highway construction, the proceeds are incorporated into the highway project; otherwise the proceeds must be used for activities eligible for federal highway fund participation. Proceeds from the sale of excess public facility properties, and from properties that have never used federal funds, are used for expenses related to overhead for the sale of the property and management of properties through our receive and expend authority. Any funds leftover at the end of the year are returned to the general fund.

- **Land condemnations – if land is not used, would it be offered first to the person who originally owned the land?**

No. DOT&PF's current disposal authorities for its transportation properties provide a preference right to the adjacent property owners for disposals of less-than-marketable sized remnant parcels. The adjacent property owner is often the person who the land was condemned from, but could also be the successor in interest. The adjoining property owner is often the only feasible developer of less than marketable sized remnant properties.

DOT&PF's current disposal authority for public facility properties (AS 35.20.070) contains a preference right for the "person, heir, successors, or assigns" that had the property condemned. Section 10 of the bill would eliminate the condemnee preference and would align this disposal authority with DOT&PF's authorities to dispose excess transportation properties, as the condemnee preference functions as a restraint on alienation. The example relating to the community health services building operated by the Council of Athabascan Tribal Governments would also apply here.

If you or your committee members have any further questions, please feel free to contact me at 465-3906.

Sincerely,



K. Kim Rice
Deputy Commissioner



THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

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March 31, 2014

The Honorable Senator Egan
Chair, Senate Transportation Committee
Alaska State Capitol, Room 9
Juneau, Alaska 99801

Dear Senator Egan:

In response to the March 25, 2014 hearing of Senate Bill 211 by the Senate Transportation Standing Committee members, questions and concerns were presented by John Bitney representing the North Slope Borough (NSB), Julie Smith and Lisa Weissler. The following answers are in response to these public comments:

North Slope Borough comments:

- **North Slope Borough's primary concern was Section 15 of the bill, authorizing the transfer of Happy Valley and Franklin Bluffs on the Dalton Highway from the Department of Natural Resources (DNR) to the Department of Transportation (DOT&PF) on the Dalton Highway.**

The Department is proposing removing section 15 from the bill. The Department is not abandoning its pursuit of the property to be transferred to DOT&PF as appurtenances to the Dalton Highway and to fulfill our mission of providing public transportation and infrastructure. These facilities are critical to our continued maintenance and operations of the haul road and to provide general service aviation operators alternative airports when Deadhorse is not available. DOT&PF will continue to work with DNR and NSB on the land selections.

Julie Smith's comments:

As Ms. Smith explained in her testimony, this is the third set of comments that she has provided to the committee and so the Department refers to our response dated March 18, 2014 for similar questions. ([SB211_milius.milles.smith_response3-18-14.pdf](#)). Our reply to new questions and further clarifications is below:

- **Sections 3, 5, and 8 of the bill require surveys and title transfers of the hundreds of parcels of state land involved in airports, highways, public facilities and material sites included in the bill. What is the expected cost for obtaining these surveys and conveyances of title?**

Sections 3, 5 and 8 relate to the transfer of state owned public domain land to DOT&PF for future public projects. The cost to survey the exact parcel(s) to be incorporated into a state infrastructure project is a component of the capital cost of the project. As they are future projects with undefined right-of-way needs,

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no estimate for the cost of surveys can be provided at this time. As the land transfers will be necessary for either capital improvement or maintenance projects, the funds required for surveys of the new right-of-way will be provided by the federal or state project funds in the same manner as project surveys are currently funded.

- **Section 13 changes the fiscal management of material sales in Alaska so that DNR would no longer charge DOT&PF or DOT&PF contractors for material. How much money is involved? Where will the money go that is no longer paid to DNR? Will DOT&PF simply keep these funds in its own budget? If so, is DOT&PF required to provide an accounting of how SB 211 shifts funding from DNR and the State General Fund to DOT&PF? If there is some other fiscal impact that will result from SB 211, what is it? What is the fiscal impact of SB 211?**

Under the current system, DOT&PF pays DNR \$0.50 per cubic yard for the extraction of material from a state-owned site if it is used on a DOT&PF project (most often these are sites opened and managed by DOT&PF). Under the proposed system, no money would be paid from DOT&PF's capital improvement project appropriation to DNR's general fund operating account for material sales. As the material quantities for projects vary and as there are a multitude of other unrelated bid items on a project and as a contractor may elect to use other than state-owned sites, it would be very difficult to estimate the overall reduction in DOT&PF project costs. However, because of this bill, DOT&PF expects overall efficiencies and a savings by waiving the fees and contracting process for state supplied materials. DOT&PF and DNR each expect to see reduced administrative costs--and reassignment of staff to better tasks--when DOT&PF-DNR material sales contracts become no longer necessary.

Again, DOT&PF will continue to track material quantities extracted from a material site and placed on the project. DOT&PF and DNR have submitted a zero fiscal note to this bill because both agencies expect to reduce the administrative burden and associated agency costs in the transfer of lands and materials from DNR to DOT&PF. The zero fiscal note also applies to survey requirements, as current DOT&PF properties do not need to be surveyed to implement the provisions of the bill, and the cost of surveying state land or resources needed for future DOT&PF construction or maintenance projects will continue to be included in DOT&PF project funding.

Lisa Weissler's comments:

Before responding to each specific comment in Lisa Weissler's written testimony from March 24, 2014, DOT&PF must reiterate that the proposed amendments are designed to address the overlapping land management authorities of DOT&PF and DNR. DOT&PF is fully authorized under Titles 02, 19, and 35 to independently acquire, manage and dispose property in accordance with its government purpose mission to keep the state's transportation and public infrastructure operational. Because DOT&PF is a state agency, the land it holds and manages for its transportation and public facility properties is state land. DNR is likewise fully authorized under Title 38 to acquire, manage, and dispose state land in accordance with its multiple use mission to conserve and develop the state's natural resources. These overlapping authorities, and differing missions, result in land management paralysis situations that negatively affect neighboring property owners and the delivery of services to the public from both state agencies.

- **AS 38.05.030 has been in place since statehood. Returning state land to DNR ensures the land is managed or disposed of in a way that meets state constitutional requirements.**

AS 38.05.030 currently exempts DOT&PF's land management—including land acquisitions and disposals—from the requirements of the Alaska Land Act. This is a necessary provision as DOT&PF is fully authorized

under Titles 02, 19, and 35 to independently acquire private, state, and federal lands and dispose no longer necessary right-of-way properties. DOT&PF's land management authorities have been in place since statehood, and have proven both effective and constitutional. Under this bill, DOT&PF will continue to follow its current acquisitions and disposal processes and requirements for private, state, and federal lands—however only DNR will not have to do a separate and independent process for the “disposal” of state land when public domain land is incorporated into a DOT&PF project.

The current AS 38.05.030 requires that any less than fee interests (e.g. easements) assigned from DNR be returned to DNR for disposal when the property is no longer needed for transportation or public facility purposes. In practice, DNR's disposal of former DOT&PF infrastructure parcels and remnants takes years to decades, whereas DOT&PF normally can dispose excess property in six to ten months. DOT&PF and DNR each recognize that in many cases DNR has inadequate authorities to ever complete the property transactions necessary for DOT&PF project closeouts—which negatively affects the adjoining landowners and causes non-compliance situations with DOT&PF's federal funding agencies. The bill cures these problems by providing DOT&PF with primary authority over the surface estate of airport, highway, and public facility properties (Sec. 1, 6, and 9) and making discretionary any reversion of former public domain land to DNR upon DNR's request (Sec. 11, and Sec. 2, 4, and 10).

- **DOT&PF's current statutory authorities governing the disposal of land are limited to disposing of private land. It is the legislature's constitutional duty to establish statutes that provide for the sale of state land. Allowing DOT&PF to establish its own terms for disposal of state land violates the constitutional requirement that the legislature establish the law, and may violate the separation of powers doctrine.**

DOT&PF is a state agency, and the only land it is authorized to dispose is state land. (Once DOT&PF acquires private land, it is state land.) The reason that there are overlapping authorities in state law, as currently written, is that DOT&PF is fully empowered to acquire, manage, and dispose state right-of-way properties—which are a subset of state land—whereas DNR is fully authorized to acquire, manage, and dispose state land. DOT&PF acquires and disposes state land under its existing authorities. As described above, current authorities require DOT&PF's return of easements or assigned management rights to DNR when the surface estate is to be disposed.

The Legislature established the standard for DOT&PF disposal of its properties at statehood: DOT&PF may only dispose property that it determines is no longer necessary for transportation of public facility purposes (*See*, AS 02.15.070; AS 19.05.070; and AS 35.20.070). DOT&PF's determination to dispose property is based on the engineering decision of whether the property is excess to DOT&PF's operational needs; DOT&PF's standard is more fitting to the management of state transportation and public facility infrastructure than DNR's general “best interest of the state” standard.

Article VIII, Sec. 5 of the Constitution authorizes the Legislature to provide for transportation facilities and other public infrastructure. Under that authority, the Legislature empowered DOT&PF to manage these facilities, including the power to acquire necessary land and dispose no longer necessary land. The Legislature also granted DOT&PF authority to adopt regulations to implement its land management, acquisition, and disposal authorities (AS 02.10.010; AS 19.05.020; AS 35.05.020). The bill does not modify DOT&PF's standards or processes for disposal of excess right-of-way properties. However, the bill's sections 2, 4, and 10 provide uniform disposal language across DOT&PF's three disposal authorities so that DOT&PF's disposal regulations and procedures may be applied uniformly to a disposal of highway, airport, or public facility property.

- **No statutes are proposed regarding the process for DOT&PF's disposal of state land. DOT&PF is not required to use the comprehensive public notice standard required for the disposal of state land under AS 38.05.945-.946.**

As explained above, DOT&PF's disposal authorities were granted at statehood, and the amendments to provide uniformity across DOT&PF's statutes remain consistent with DOT&PF's current land disposal powers. In the same way that DOT&PF does not use DNR authorities for its acquisition or management of state right-of-way properties, DOT&PF does not use DNR's Alaska Land Act standards, procedures, or regulations for its disposals. DOT&PF conducts disposal of right-of-way properties, upon a finding that the property is excess to DOT&PF's needs, in accordance with its statutory land disposal authorities and implementing regulations. (*See*, 17 ACC 10.100-10.130)

DOT&PF provides public notice of all intended disposals or leases of state land in accordance with Article 8, Section 10 of the Constitution. *See*, 17 AAC 10.105(d) (notice of disposal to adjoining property owner); 17 AAC 10.110(d) (notice of disposal by competitive sale); 17 AAC 10.115(c) (notice of disposal through broker); 17 AAC 10.120(b)(2) (notice of land exchange); 17 AAC 10.130(d) (notice of disposal of property outside of right-of-way).

- **Citing Article 8, Sec. 6 of the constitution, DOT&PF says it will not manage state lands for multiple uses as DNR does because land used for government purposes is not included in the public domain. Since statehood, DNR has managed land used for governmental purposes in conformance with the constitutional principle of multiple use.**

Article VIII, Sec. 6 of the Constitution defines public domain lands—which are managed for multiple uses—to exclude limited use government purpose lands:

State Public Domain. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, *and not used or intended exclusively for governmental purposes*, constitute the state public domain.

Governmental purpose land outside of the public domain includes the transportation facilities, public facilities, and other improvements the Legislature may provide for under Art. VIII, Sec. 5. These government facilities are managed by their respective agencies for the intended purpose of the facility—whether it is a state airport, state prison, or state fish hatchery—and not for other potential multiple uses. Likewise, Article VIII, Sec. 7 authorizes the Legislature to designate special purpose sites for historic, cultural, recreational, or scientific value sites. DNR manages many of these legislatively designated areas—most notably the state parks and state forests—for the limited purpose of their legislative designation and not for general multiple use.

In AS 44.42.020, the Legislature empowered DOT&PF to manage, operate, and maintain state transportation facilities and public facilities. These government purpose properties are not included in the public domain and are independently managed by DOT&PF in accordance with Titles 02, 19, and 35. DNR has no statutory authority to manage these properties for transportation of public facility purposes, though DNR has statutory authority to administer its programs (mining, oil and gas leasing, timber sales, material sales, etc.) on state land.

- **When exercising its primary authority over state transportation and public facility land, under sections 1, 6, and 9 of the bill, how will DOT&PF establish terms and conditions applicable to DNR authorizations? Are there any limits?**

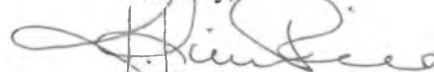
Sections 1, 6, and 9 will require DNR to seek DOT&PF concurrence for any DNR permitted activity in a DOT&PF right-of-way. Thus, if a state-owned airport is located within a tract of land being considered by DNR for an oil and gas lease application, DOT&PF will have the opportunity to review the lease application and condition development activities that may be proposed for the airport right-of-way. DOT&PF has fully developed regulations and permitting programs to authorize private activities on the state's transportation and public facility properties, while still protecting the public and the state's infrastructure. Any DOT&PF terms or conditions on DNR authorized activities would be issued in accordance with DOT&PF's existing permitting authorities, such as: airport boundary crossing permits (17 AAC 45.285); airport building permits (17 AAC 45.280); utility permits (17 AAC 15.010-901); highway encroachment permits (17 AAC 10.010-.015); access to or across highways (17 AAC 10.020-.095); private use of AMHS terminals and facilities (17 AAC 250-390).

- **Are material extraction and development activities on highway and public facility properties still subject to DNR permitting authorities, as indicated by sections 1, 6, and 9, even though control of the surface estate is being vested in DOT&PF?**

Sections 1, 6, and 9 establish DOT&PF's primary authority to manage the land and facilities located within the state's rights-of-way for transportation or public facility purposes. DNR retains its authority to permit certain activities on state land, although those authorizations are subject to DOT&PF conditions. For instance, extraction of materials by the public will still be allowed under DNR's authorities, though DNR must coordinate with DOT&PF on the terms and conditions of the third-party use of material sites in DOT&PF's rights-of-ways (DOT&PF is responsible for environmental compliance and safety/stability of these sites). DNR also retains its authorities over certain development aspects in DOT&PF rights-of-way subject to DOT&PF conditions, such as pipeline right-of-way leasing. Because DOT&PF is a state agency, its ownership of the surface estate of transportation and public facility properties does not hinder DNR's regulatory authority over activities on state land.

We hope these answers help clarify Senate Bill 211. 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

MEMORANDUM OF UNDERSTANDING
between

UNITED STATES OF AMERICA
Through the U.S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
ALASKA REGION
and the
STATE OF ALASKA,
Through the DEPARTMENT OF NATURAL RESOURCES and
the DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

This **MEMORANDUM OF UNDERSTANDING** ("MOU"), is entered into by and between the United States of America ("United States"), acting through the USDA Forest Service, Alaska Region ("Forest Service") and the State of Alaska ("State"), acting through the Departments of Natural Resources ("DNR") and Transportation and Public Facilities ("DOT&PF") (collectively, the "parties").

A. PURPOSE

The purpose of this MOU is to establish a framework and process for granting the reciprocal rights-of-way and easements described in Section 4407 of Public Law 109-59 ("Section 4407"), which provides as follows: "Notwithstanding any other provision of law, the reciprocal rights-of-way and easements identified on the map numbered 92337 and dated June 15, 2005, are hereby enacted into law."

B. STATEMENT OF MUTUAL INTEREST AND BENEFITS

The State and the United States each have a need for access and rights across their intermingled ownerships for such uses as transportation and utility corridors, log transfer facilities and marine access facilities in and around the Tongass National Forest. The parties have identified their respective access needs on the map entitled Transfer Facilities, Marine Access Points and Proposed Transportation Corridors in Southeast Alaska, numbered 92337, and dated June 15, 2005 ("Map"), which is Attachment A and is hereby incorporated and made part of this MOU. The parties intend to use their best efforts to grant the identified rights-of-way and easements in the manner prescribed in this MOU, thereby providing for development and maintenance of access and the adjunct rights of construction, operation and maintenance of facilities and improvements, which will provide substantial benefits to the public. The parties recognize that such rights will be granted consistent with their respective obligations to protect scenic, archaeological, recreation, and fish and wildlife values, resources and habitats on National Forest System lands and State of Alaska lands.

C. DEFINITIONS

Solely for purposes of this MOU, the following definitions shall apply:

1. Right-of-way. Land authorized to be used or occupied for the construction, operation, maintenance and termination of a project, such as roads, marine structures, and utilities, passing over, upon, under or through such land. A right-of-way shall be conveyed by an easement or other instrument agreed upon by the parties.

2. Easement. An interest in land owned by another party that entitles the holder to a specific limited use or enjoyment, including the right to construct, reconstruct, operate, and maintain authorized improvements.

3. Log Transfer Facility ("LTF"). A facility that is constructed in whole or in part in marine or inland waters and is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft. Also included are appurtenant constructed facilities such as equipment loading ramps, docks, floats, buoys, booms, log rafts, pilings, and anchors. LTFs that are subject to this MOU are identified on the Map.

4. Marine Access Point. ("MAP"). A facility that is constructed or may be constructed in marine or inland waters and is utilized for the purpose of providing public access to adjacent National Forest system lands and facilities. Such facilities may include docks, boat ramps, floats, buoys, anchors, breakwaters, boat haulouts, and similar improvements and facilities. MAPs that are subject to this MOU are identified on the Map.

5. Highway. Any public way for vehicular travel and other transportation related uses, including the entire area within the right-of-way and related facilities.

6. Utility. The term utility or utilities includes but is not limited to poles, lines, trenches, bridges, utildors, tunnels, pipelines, and any other system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, steam, heat, light, air, sewage, drainage not connected with highway drainage, or irrigation.

D. THE UNITED STATES SHALL:

1. The United States shall grant to the State rights-of-way substantially similar in form to Attachment B. The rights-of-way shall include at least those rights necessary for DOT&PF to conduct engineering and all other activities necessary or incident to highway and utility planning, design and environmental review processes. The term of the rights-of-way shall be fifty (50) years and non-renewable. The location of the rights-of-way will be as set forth in the Map. The Map is intended, in part, to identify the servient estate. Attachment B shall identify the section, township, range and meridian designation of the servient estate, and will include a starting point, ending point, and approximate width and alignment of each right-of-way corridor. The location of the right-of-way will be further detailed by a survey diagram or diagrams at times and places mutually agreed by the parties and such survey diagram will be prepared during the course of activities described above, but prior to construction (see D.2). Rights-of-way issued pursuant to this section shall terminate upon issuance of an easement pursuant to paragraph D.2.

2. If, within the term of the right-of-way granted pursuant to paragraph D.1, and prior to any construction, the State submits a survey diagram that has received written acceptance pursuant to paragraph F.6, the Forest Service shall grant a renewable fifty-five (55) year easement substantially similar in form to Attachment C. The easement shall be for the construction, reconstruction, operation and maintenance of roads, utilities, and other linear transportation and utility purposes. The easement shall confer upon the State non-exclusive rights, at no charge. The easement shall reserve in the United States, among other things, the right to the standing timber within the right-of-way, the subsurface estate, the right of public access and use other than for highway and utility purposes, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of National Forest System lands. Exercise of any of the rights reserved to the United States may not unreasonably interfere with the highway or utility purposes of the easement, and is subject to all applicable rules and requirements associated with operating and maintaining a public highway and utilities. Subject to existing Forest Service regulations and Forest Service approval of pit location, either a free use permit shall be issued for access to and use of mineral materials within construction limits if used for construction of a highway or for highway repair purposes, or the easement will be drafted, amended or modified to include such right.

3. Granting of an easement under paragraph D.2 shall not be unreasonably withheld. If an easement is not granted pursuant to paragraph D.2, any rights-of-way previously granted shall terminate without the necessity for any decision or action by an authorized representative of the United States or the State. Prior to termination, the parties may mutually agree to an extension of any right-of-way previously granted under paragraph one of this section.

4. The easements in paragraph D.2 shall be sufficient to satisfy the requirements of 23 CFR 1.23 for the construction, operation, and maintenance of roads, utilities, and other linear transportation and utility purposes for each route identified on the Map.

5. The grant of rights-of-way in Attachment B shall be in accordance with the schedule of priorities prepared by the State, which appears as Attachment D and is hereby incorporated into this MOU.

E. THE STATE OF ALASKA SHALL:

1. Log Transfer Facilities.

a. Subject to the requirements of paragraph E.3 below, DNR shall grant to the United States a tideland easement with a term of fifty-five (55) years for each LTF site as represented on a State-approved easement diagram. The easement granted by DNR shall be substantially similar in form to Attachment E, and is subject to the reservations in paragraph E.1.b. Such easement shall confer upon the United States the non-exclusive right to utilize the site, at no charge, and shall be renewable. The easement shall generally encumber approximately ten (10) acres for each LTF site. The grant of easements shall be in accordance with the schedule of priorities prepared by the United States, which appears as Attachment F and is hereby incorporated into this MOU. If, for any reason, DNR rejects a particular site for an LTF easement, the Forest Service shall have the opportunity to select an alternative site in the area

that will serve its needs. All easements shall be applied for within fifty years of the effective date of this MOU.

b. If DNR determines that, due to adjacent uses or other considerations, it is necessary that an Alaska Tideland Survey for the easement area and constructed improvements thereon be prepared, the Forest Service shall undertake such survey, at its expense. The authority to permit third-party use within the area encumbered by the easement is expressly reserved by the State, except that such use shall not unreasonably interfere with the rights granted to the United States including actual log transfer operations and the ability of the Forest Service to restrict third-party use for purposes of public safety. The easement shall reserve in the State, among other things, the right to the standing timber, the subsurface estate, the right of public access and use, the right to regulate acts or omissions, and the right to enforce regulations related to the occupancy and use of State lands. Except as provided in paragraph E.1.c below, third party use does not include Forest Service contractors, permittees and assigns.

c. The State shall not require a permit or other written authorization for users that access National Forest System lands or other public lands through LTFs if the use is noncommercial and does not interfere with public access or another public use. The State further agrees, in order to effectuate the purposes of this MOU, that it shall not require a permit or other written authorization for users that access National Forest System lands for commercial use through LTFs, except that the State may require a third party to obtain a permit or other written authorization for access through LTFs to a lodge, hotel, industrial facility, or other similar improvement located on National Forest System or other public lands.

2. Marine Access Points.

a. The State acknowledges and agrees that pursuant to the regulations at 11 AAC 96.020, the United States, as an upland landowner, without a permit or other written authorization for itself and its assigns and permittees, may construct, operate, and maintain, in lakes, rivers or marine waters within the Tongass National Forest, public docks, boat ramps, mooring buoys, floating breakwaters, and other facilities that are designed and used for access to and from water and provide public access to adjacent National Forest System lands and facilities if the use of such facilities is noncommercial and does not interfere with public access or another public use. The State further agrees, in order to effectuate the purposes of this MOU, that it shall not require a permit or other written authorization for users that access National Forest System lands for commercial use through such facilities constructed at those MAP locations identified on the Map, except that the State may require a third party to obtain a permit or other written authorization for access through constructed facilities at a MAP location to a lodge, hotel, industrial facility, or other similar improvement located on National Forest System or other public lands.

b. In the event that DNR subsequently changes its regulations at 11 AAC 96.020 such that the facilities referenced above are required to come under a State authorization for noncommercial use or be removed, or that new facilities could not be constructed without such authorization, the United States may nevertheless continue the same uses without the need for making formal application to DNR to continue such uses. The parties must nevertheless consult,

and DNR shall issue such authorization as necessary to memorialize the use of MAP facilities for noncommercial use, at no charge to the Forest Service. The authorization must be in a form acceptable to both parties.

3. State Process for Grant of Easements. DNR will follow the relevant requirements of AS 38.05 in the granting of an easement under this section, including preparing a preliminary and final best interest finding and providing public notice as required by AS 38.05.850.

F. THE STATE AND UNITED STATES MUTUALLY AGREE AND UNDERSTAND:

1. Mutual Use. The parties intend that the reciprocal interests granted herein shall be available for mutual use, so long as such uses do not unreasonably interfere with the rights granted, and the terms and conditions of the easements described herein. The right of reasonable mutual use includes the right to perform surveys, collect data, and perform geotechnical drilling, and other engineering investigation measures.

2. Public Use. Both parties shall allow reasonable public use of the land interests identified herein so long as such use does not unreasonably interfere, limit, or obstruct the rights identified herein.

3. Operation, Maintenance and Use. The party constructing a particular improvement shall take responsibility for the proper operation, maintenance, and regulation of uses of such improvement.

4. Existing Rights. All grants of interests are subject to valid existing rights.

5. Change in Ownership. When a transfer of ownership in any of the land interests subject to this MOU occurs, the parties shall update all records for the affected features and determine any obligations resulting from such transfer.

6. Plan Submission and Approval. When either the Forest Service or the State is considering the construction or reconstruction of an improvement within any lands subject to this MOU, it will give the other party written notice, which shall be accompanied by plans, drawings and specifications, and a plat showing the approximate location of the proposed improvements. Prior to beginning construction, written acceptance must be received from the other party of the plans, drawings and specifications, but such written acceptance shall not be unreasonably withheld. Such written acceptance shall not require any special form, and shall not require a special use authorization or DNR permit. Both parties shall endeavor to complete reviews within 60 days.

7. Construction Monitoring. Each party shall keep the other informed of construction progress. Periodic inspections may be made by either party as deemed necessary during construction, and objections or issues relating to construction or construction related activities must be raised in writing.


15. Termination. Any of the parties, in writing, may terminate this MOU in whole or in part, at any time before the date of expiration.

16. Authorized Representatives. By signature below, the State and the Forest Service certify that the individuals listed in this document as the representatives of the State and the Forest Service are authorized to act in matters related to this MOU.

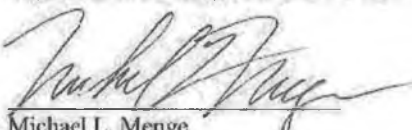
17. Commencement/Expiration. This MOU is executed as of the date of the last signature below and is effective through December 31, 2018. The MOU may, however, be extended by written mutual consent of the parties to this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this Reciprocal Right-of-Way Memorandum of Understanding to be properly executed by their authorized representatives on the day and year first above written.

STATE OF ALASKA


By 
Michael A. Barton
Commissioner
Department of Transportation and Public Facilities

9/22/16
Date

By 
Michael L. Menge
Commissioner
Department of Natural Resources

9/29/06
Date

UNITED STATES OF AMERICA

By 
Dennis E. Bschor, Regional Forester
Forest Service, Alaska Region
United States Department of Agriculture

7/22/2006
Date

The authority and format of this instrument has been reviewed and approved for signature.

/s/ Linda L. Jones September 20, 2006
FS Agreement Specialist Date

List of Attachments

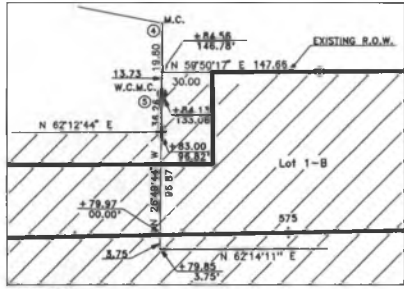
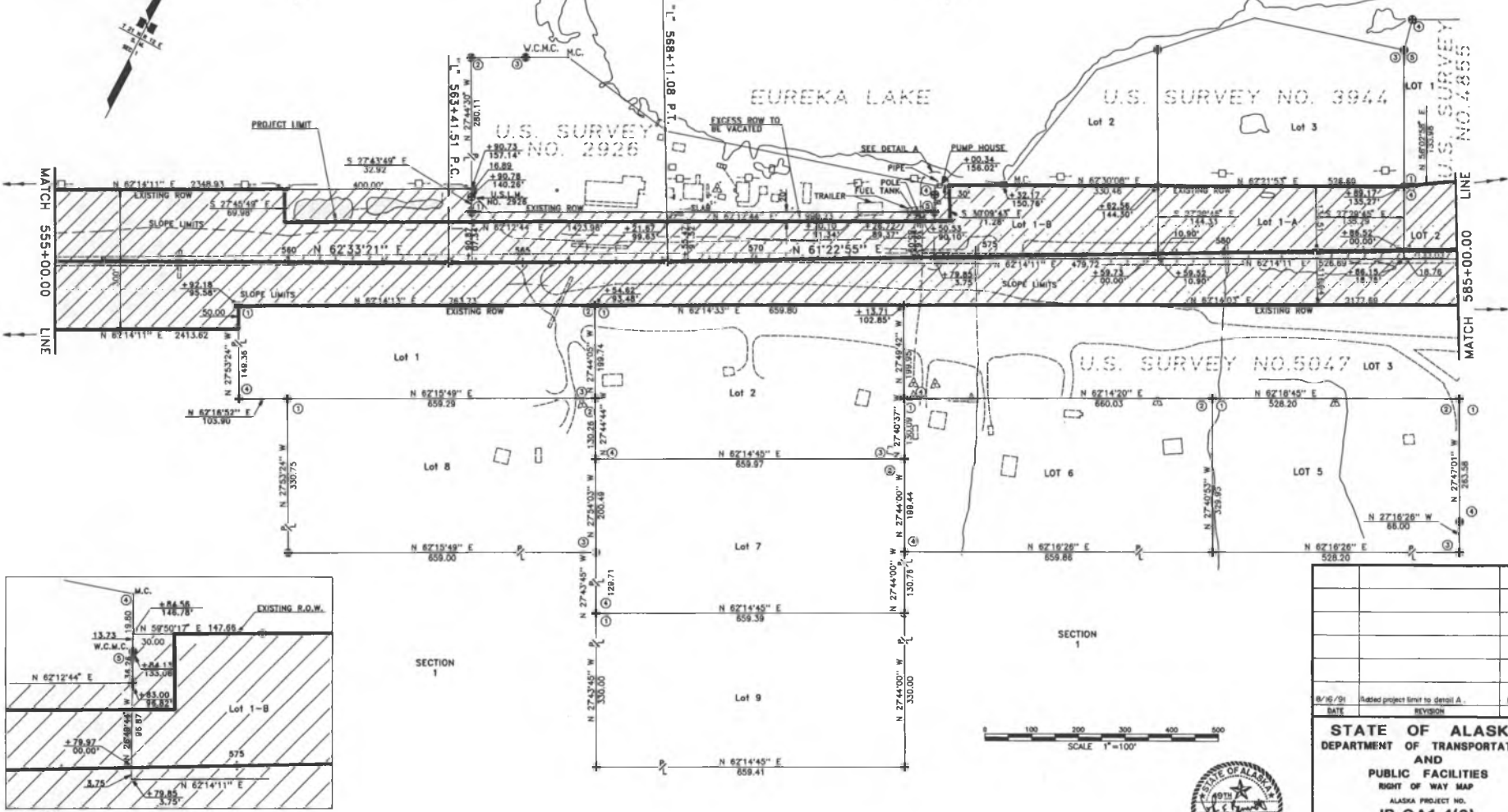
Attachment A	Map 92337
Attachment B	Right-of-Way Easement (MOU Paragraph D.1)
Attachment C	Right-of-Way Easement (MOU Paragraph D.2)
Attachment D	Listing of Transportation and Utility Corridors
Attachment E	Public Easement (ADL) (MOU Paragraph E.1)
Attachment F	Listing of Log Transfer Sites



$\Delta = 1'10'26''$
 $D = 0'15'00''$
 $T = 234.79'$
 $L = 469.57'$
 $R = 22,918.31'$

SECTION 1

SECTION 1



DETAIL A
NTS

8/16/91	Revised project limit to detail A.	N. D.
DATE	REVISION	BY



STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION
 AND
 PUBLIC FACILITIES
 RIGHT OF WAY MAP
 ALASKA PROJECT NO.
IR-OA1-4(2)
 GLENN HIGHWAY 118-NORTH
 SCALE: 1" = 100' SHEET 22 OF 35

SHEET NO. 22 DRAWING #4389
 CLASS. INT. FILE #118-NORTH
 PROJECT NO. 118-N-011

Plat 47-12
 Chitina Rec. Dist
 6/16/47

Plat 47-35
 Palmer Rec. Dist
 6/02/47



ASSOCIATED GENERAL CONTRACTORS of ALASKA

8005 SCHOON STREET, SUITE 100 • ANCHORAGE, ALASKA 99518
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

March 17, 2014

Representative Peggy Wilson
Chair, House Transportation Committee
State Capitol Room 406
Juneau AK, 99801

RE: HB 371

Dear Representative Wilson,

Peggy

The Associated General Contractors of Alaska (AGC) is a trade association representing over 650 Alaskan businesses in the construction industry. I am writing to you in support of House Bill 371.

I had the honor of being a Deputy Commissioner of Transportation for Highways and Facilities from 2003 to 2008. During my tenure at DOT, one of the many things I worked on was to improve project delivery – these efforts included changes within DOT, at the state level and at the federal level.

At the federal level we worked to get the “reciprocal easements” in the SAFTEA-LU legislation, only to be stymied by a redundant DNR process and a 55-year lease restriction with DNR. This greatly hampered DOT’s ability to work with the Forest Service in these areas of mutual interest. These easements are vital to the transportation needs in Southeast Alaska.

At DOT, we often found that conflicting mission statements and regulations between state agencies was often one of the biggest and least necessary obstacles to get by in project development. It was not unusual to have the Governor’s office intercede in what appeared to be little more than a “sibling” dispute backed up by an overzealous interpretation of regulation or statute.

The time and expense in dealing with land and material transfers from one state agency (DNR) to another (DOT) is a good example. In remote locations where there are often no alternatives, the difficulty of permitting gravel sources on DNR lands adds unnecessary time and expense to projects. Contractors have to pay the state (DNR) for materials

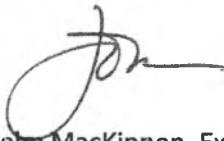
from state owned gravel pits on state (DOT) projects. Requirements such as this are common at the federal level; in fact we've come expect them. We shouldn't be doing it at the state level.

Every project that requires a land transfer or exchange for right-of-way with the Alaska Railroad requires legislative approval. This requirement delays projects at least a year, and is not necessary.

In summary, this bill will allow the Department of Transportation to efficiently administer its statutory obligation consistent with the public interest. There are enough difficulties dealing with considerable redundancy in the myriad of federal requirements. Changes and improvements that can be made at the State level need to be made. This legislation maintains the public process for transportation needs that has been established over decades, but it eliminates unnecessary and costly redundancy.

The AGC fully supports this legislation and hopes for its quick passage. Thank you for hearing HB371.

Sincerely,

A handwritten signature in black ink, appearing to read "John", with a long horizontal flourish extending to the right.

John MacKinnon, Executive Director
Associated General Contractors of Alaska

Rebecca Rooney

From: Miller, Mike <Mike.Miller@gcinc.com>
Sent: Wednesday, March 19, 2014 4:37 PM
To: Rep. Peggy Wilson
Subject: Support for HB371

Representative Wilson:

I am writing in support of HB371. As a construction engineer with over 40 years' experience in estimating, bidding and building Alaska roads and streets, I have seen many cases where projects and therefore jobs were put on hold by a disagreement between State Agencies. This legislation maintains the public process for transportation needs, established over decades, but it eliminates unnecessary and costly redundancies.

To the question of contractors purchasing gravel from private sources or using State material sources, contractors will use the most cost efficient source. Price, available quantity, material quality, distance to the project are all factors we weigh in determining our bids. DNR charges a royalty just as private sources do.

Again, please support HB371

Thank you for your service to Alaska.

Mike

Michael D. Miller

Business Development Manager/Estimator

Alaska Region-Granite Construction Company

Direct 907.267.5273 | Cell 907.229.7838 | Fax 907.344.1562

Mike.Miller@gcinc.com | www.graniteconstruction.com



Rebecca Rooney

From: Tony Johansen <TJohansen@grtnw.com>
Sent: Wednesday, March 19, 2014 4:07 PM
To: Rep. Peggy Wilson
Subject: HB 371

Dear Representative Wilson:

Thank you for your service to Alaska. We are privileged to have people of your ability and energy willing to serve our State. I want to take a moment to voice my support of HB 371. Whatever we can do to expedite the acquisition of right of way and of material for our infrastructure projects will reduce the delivery time and the cost of those projects.

Thank you for your time,

Anton K. Johansen



PO Box 83750
Fairbanks, AK

T: 301.695.2092

aopa.org/region/ak

Tom George
Alaska Regional Manager, AOPA

March 19, 2014

The Honorable Peggy Wilson
Chair, House Transportation Committee
Alaska State House
State Capitol, Room 406
Juneau, AK 99801-1182

Dear Representative Wilson:

The Aircraft Owners and Pilots Association (AOPA) is the world's largest aviation organization, representing the general aviation interests of pilots and aircraft owners, including approximately 4,000 of our members in the state of Alaska. Since 1939, AOPA has been committed to ensuring the safety, future viability and development of general aviation as an integral part of our nation's transportation system. On behalf of AOPA and our members we thank you and the House Transportation Committee for considering House Bill 371, addressing land transfers and administrative details between the Department of Transportation & Public Facilities (DOT&PF) and the Department of Natural Resources (DNR).

We understand that the changes in this bill will allow DOT&PF to more efficiently deal with land transfers and other administrative functions which are needed to construct and maintain airports and other transportation infrastructure across the state.

We strongly support the provisions in the bill that would transfer land containing the Happy Valley and Franklin Bluffs airstrips to DOT&PF. The Happy Valley airstrip, originally built to support construction of the Trans Alaska Pipeline, is the only road-accessible airstrip in the northern foothills of the Brooks Range. It provides much needed access for recreational, industrial and government activities in this portion of the North Slope. Land for the Franklin Bluffs airstrip is also needed. Often coastal weather keeps aircraft operating under visual flight rules from being able to land at Deadhorse. An emergency airstrip is needed there for aircraft to land and wait. Today, aircraft are occasionally forced to land on the road when unforecast weather occurs.

Airports are an important component of Alaska's transportation infrastructure. Thank you for your attention to this legislation.

Sincerely,

Tom George
Alaska Regional Manager



4000 Old Seward Hwy., Suite 101
Anchorage, Alaska 99503
Tel: (907) 273-1000
Fax: (907) 273-1099
www.colaska.com

March 20th, 2014

Representative Peggy Wilson
State Capitol, Room 406
Juneau, AK 99801-1182

Re: HB 371

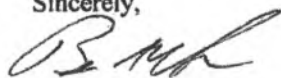
Dear Representative Wilson ,

I am writing to you on behalf of Colaska, Inc., in full support of HB 371. Colaska is the largest heavy civil contractor in the State, with operations in every region served by the Department of Transportation. Colaska companies, including QAP in the Central Region, Secon in the Southeast and Exclusive Paving in the Northern Region are extensively involved in airport and highway construction both on the road system and in remote areas, and we have experienced first-hand the delays and project impacts caused by the current system of land transfers and split authorities between different Departments within the State Government.

House Bill 371 will allow the Department of Transportation and Public Facilities to efficiently administer the construction and maintenance programs for the State's highways, airports, and public facilities consistent with the public interest. It will serve the interests of the State by eliminating unnecessary delays in transfer of required gravel sources from the Department of Natural Resources to the Department of Transport, which will result in greater efficiency and cost savings to the State. In Alaska, the construction season is severely limited by the weather. Any delay to a project makes it susceptible to increased cost if re-mobilization of the crew and equipment is required, as might happen if the temperature drops too low for paving near the end of the season. In short, highway and airport construction in Alaska is intolerant of delays, and any unnecessary delay should be avoided if at all possible.

I believe the rights of the existing leaseholders are quite sufficiently protected by this bill, as are the Public Notice provisions, and I urge you, for the greater good, to promote HB 371.

Sincerely,



Ben Northey, CPC

Rebecca Rooney

From: Dan Hall <DHALL@knik.lynden.com>
Sent: Friday, March 21, 2014 9:31 AM
To: Rep. Peggy Wilson; Sen. Dennis Egan
Subject: HB 371

Dear Senator Egan and Representative Wilson:

I am writing in support of SB 211 (and HB 371), an act relating to the Department of Transportation ("An Act providing for the Department of Transportation and Public Facilities to hold the surface estate of certain state land; relating to the transfer of certain state land and materials from the Department of Natural Resources to the Department of Transportation and Public Facilities for the construction or maintenance of the state highway system, state airports, and state public buildings and facilities; relating to the lease or sale of certain marine or harbor facilities; relating to the lease or disposal by the Department of Transportation and Public Facilities of rights-of-way, property interests, or improvements that are no longer required; relating to the grant of certain easements over submerged state land to the federal government; relating to the transfer of certain maintenance stations on the James Dalton Highway to the Department of Transportation and Public Facilities; relating to the conveyance of land for right-of-way purposes from the Alaska Railroad Corporation to the Department of Transportation and Public Facilities; and providing for an effective date.")

I believe this bill will increase efficiencies and clarity in DOT's processes. It will streamline projects and cut red tape, moving vital infrastructure projects forward and putting Alaskans to work.

As a relatively young state, Alaska lacks much needed infrastructure. And with a significant proportion of Alaska being remote, the cost of construction is already high, and will likely continue to rise. This bill will reduce redundancy and streamline projects and improve access to construction materials, as well as allow for conveyance of land for right-of-way purposes.

Thank you for your consideration of my comments.



Dan Hall

Cell 907-444-4041

Office 907-249-0208

Rebecca Rooney

From: Osgood, Stewart <sosgood@dowlhkm.com>
Sent: Sunday, March 23, 2014 5:08 PM
To: Sen. Dennis Egan; Rep. Peggy Wilson
Subject: HB 371 - DOWL HKM Supports It

Representative Peggy Wilson
Chair, House Transportation Committee
State Capitol Room 406
Juneau AK, 99801

Senator Dennis Egan
Chair, Senate Transportation Committee
State Capitol
Juneau, AK 99801

RE: HB 371

Dear Representative Wilson and Senator Egan,

My firm, DOWL HKM, supports the passage of HB 371 to allow the Department of Transportation and Public Facilities to more effectively carry out their mission of building, maintaining and operating the vital transportation facilities in Alaska. Our company is heavily invested in progressing the development of our States transportation facilities, and we've worked closely with DOT for decades to make that a reality. DOWL HKM is the largest civil engineering firm in Alaska and we are headquarter in Anchorage, with 23 total offices in 8 states. We employ in excess of 400 people at our peak in the summer, with nearly 200 in Alaska. While we have a diverse client base, Alaska DOT is among our largest clients and we have worked hand in hand with them to deliver many high quality projects to Alaska in the last several decades.

It would seem intuitive that the State Agency that relies heavily on the management of its' R/W and real estate base would also be the appropriate State Agency to directly manage that asset. Each construction season the DOT&PF delivers hundreds of construction projects that inject millions of dollars of public money into our economy. Project delivery is becoming more difficult each year due to additional regulations from state and federal agencies. Th combined effect on DOT is a slower, more expensive, and cumbersome process that adds virtually no value to the project. The people of the state of Alaska deserve better. It is imperative that this bill move forward to set the groundwork for DOT to work cooperatively with and other sister agencies to accomplish its mission.

It's apparent to us that DOT&PF is the appropriate good stewards of our transportation facilities, and should be encouraged to continue that stewardship with reasonable land ownership. HB 371 removes onerous oversight and management of State owned property and allows DOT&PF to make timely decisions that will reduce project delivery and enhance regular maintenance.

DOWLHKM supports this legislation and hopes for its quick passage. Thank you for hearing HB 371.

Sincerely,

Stewart Osgood, PE
President, DOWL HKM
Cell: 907-830-2233



March 25, 2014

Representative Peggy Wilson
Chair, Transportation Committee
State Capitol Room 406
Juneau, AK 99801

RE: HB 371

Dear Peggy

Cruz Construction Inc. is an Alaskan owned and operated business. We have projects all over the state year round. I am writing to you in support of House bill 371.

As the old saying goes, "Alaska has 2 seasons, winter and construction season." If HB 371 passed this would greatly benefit all construction trades in Alaska. The lessened wait time for permits would create projects to start quicker in turn would create us to have projects finished sooner and possibly cheaper.

HB 371 would create a streamline process for Construction projects that need permits for gravel sources near state lands. So many projects in the past have been delayed up to 2 years waiting for legislator approval. Cruz Construction Inc. creates jobs for Alaskans. We need to help build our economy all the while building Alaska for the future. Cruz Construction fully supports this legislation and hopes for its quick passage. Thank you for hearing HB371.

We look forward to a quick passage of HB371.

Best,

A handwritten signature in black ink, appearing to read "Dave Cruz".

Dave Cruz, President of Cruz Companies



Interior Alaska – The “Place” To Do Business

100 Cushman St., Suite 102 | Fairbanks, Alaska 99701-4665
Phone (907) 452-1105 | Fax (907) 456-6968 | www.FairbanksChamber.org

March 31, 2014

Dear Members of the Senate Transportation & House Resources Committees,

The Greater Fairbanks Chamber of Commerce represents over 700 businesses and organizations throughout Interior Alaska and works to advocate for a healthy economic environment to ensure that Fairbanks and Interior Alaska are attractive places for both business and community. Transportation is a key factor that impacts not only our local economy, but that of the entire state. Toward these goals, the Chamber supports the Senate Transportation Committee’s bill, SB 211 and companion bill HB 371, which deal with the transfer of state lands between the Department of Transportation and Public Facilities (DOT&PF), and the Department of Natural Resources (DNR), in support of the construction and maintenance of our transportation infrastructure.

It is our understanding that SB 211 and HB 371 will dramatically streamline some of the administrative procedures currently impeding the timely review and transfer of land management responsibility between these departments. This has, at times, delayed construction projects and led to increased timelines and ballooning project costs. The revisions in this bill are expected to help expedite transfers and improve overall efficiency.

The Fairbanks Chamber also strongly supports the transfer of lands containing the Happy Valley and Franklin Bluff airports to DOT&PF. The former pipeline construction camp at Happy Valley includes a serviceable airstrip which has become a key “remote” airport for small and medium sized aircraft, serving as a jump-off point for access to the northern Brooks Range and coastal plain. The Chamber has advocated for over 20 years for the state to retain sufficient land to protect the Happy Valley airstrip, which, given its strategic location along the Dalton Highway provides access for logistics and supply that supports industrial and recreational activities along this road corridor.

The state also needs to retain sufficient land along the Dalton Highway at Franklin Bluffs for two specific transportation purposes: 1) the installation of a future, much-needed DOT&PF maintenance station (in between the existing stations at Sag River and Deadhorse), and 2) sufficient land to restore an alternate/emergency airstrip, which will allow aircraft encountering coastal fog to land safely without expending unnecessary fuel, and wait for better weather. Today, aircraft are occasionally forced to land on the Dalton Highway, due to unforecast weather conditions.

While these areas are distant from Fairbanks, they are important elements of the transportation infrastructure, used by businesses and residents in Fairbanks as well as traffic from other parts of Alaska. We strongly support the land transfers and more efficient procedures as outlined in SB 211/HB 371.

Sincerely,

THE GREATER FAIRBANKS CHAMBER OF COMMERCE

Steve Lundgren
Board of Directors, Chair

Lisa Herbert
Executive Director

INVESTORS

DIAMOND

- BP Exploration
- ConocoPhillips
- ExxonMobil
- Fairbanks Daily News-Miner
- Fairbanks Memorial Hospital & Denali Center
- Flint Hills Resources Alaska
- Mt. McKinley Bank

PLATINUM

- Alyeska Pipeline Service Co.
- Doyon, Limited
- Fred Meyer Stores
- Golden Heart Utilities
- Wells Fargo Bank Alaska

GOLD

- Birchwood Homes
- Carlson Center
- Denali State Bank
- Design Alaska
- Doyon Utilities LLC
- First National Bank Alaska
- GCI
- Kinross Fort Knox Mine
- Lynden
- Northrim Bank
- Sumitomo Metal Mining Pogo LLC
- Usibelli Coal Mine
- WAL-MART Stores, Inc.

SILVER

- Alaska Airlines
- Alaska Communications
- Alaska Railroad
- Alaska USA
- Dr. Christopher Henry – Henry Orthodontics
- Everts Air Cargo, Everts Air AK
- Exclusive Paving/Univ. Redi-Mix
- Fairbanks Natural Gas
- Flowline Alaska
- General Teamsters Local 959
- Golden Valley Electric Association
- Hale & Associates, Inc.
- JL Properties, Inc.
- Key Bank
- MAC Federal Credit Union
- Personnel Plus
- Sam’s Club
- Shell Exploration & Production Co.
- Spirit of Alaska FCU
- Tanana Valley Clinic
- TDL Staffing
- Tower Hill Mines-Livengood Gold Project
- University of Alaska Fairbanks
- Verizon Wireless
- Viviamo Companies
- Yukon Title Company

Rebecca Rooney

From: Gallagher, Tim <Tim.Gallagher@hdrinc.com>
Sent: Tuesday, April 01, 2014 1:32 PM
To: Rep. Peggy Wilson; Sen. Dennis Egan
Subject: HDR Alaska Endorsement of HB 371 and SB 211

Representative Wilson and Senator Egan,

As the General Manager of HDR Alaska (150 employees), I want to express my full support for both of these bills.

Legislation that maximizes our ability to be as efficient as possible in developing our State's infrastructure is critical to economic viability.

Thanks for all that you do.

Tim

Tim Gallagher, P.E.HDR Alaska, Inc.

Vice President

Area Manager

2525 C. Street Suite 305 | Anchorage, AK 99503

907.644.2039 | 907.317.9375 cell | 907.644.2022 fax

tim.gallagher@hdrinc.com | hdrinc.com

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KETCHIKAN READY-MIX & QUARRY, INC.

(907) 225-2925

4418 N. TONGASS HWY.
KETCHIKAN, ALASKA 99901

FAX: (907) 225-0518

March 31, 2014

Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resource Committee

Honorable Senators and Representatives,

We are writing to provide written comments in response to Senate Bill 211 and House Bill 371 relating to State land and materials. Ketchikan Ready Mix and Quarry Inc. has concerns with the possible transition of DNR management of state land and material sales to DOT control. The material sales part of this bill could adversely affect small businesses such as ours. We have sold aggregate and concrete throughout Southeast Alaska for over forty years.

We have read all of the correspondences posted and feel that our concerns have been addressed several times over in the letters submitted by Chris Milles, Julie Smith and Dick Mylius. There seems to be no definite list of properties that will be affected by the proposed changes available to the public. The idea of an open "free range" selection creates uneasiness. Will private individuals and companies still be able to purchase material through DNR?

There is a need to identify in public the locations prior to this bill going forward as other small businesses such as ours may not even be aware of what is happening and how they may be affected. If this bill is to go through DOT needs to be on record of their willingness to lease to others if they are not using the land. 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 sites.

Ketchikan Ready Mix has obtained several permits for material sales from DNR over many years and has had the pleasure of a smooth and quick process while working with Ted Deates. We have never been disappointed with the DNR process and received immediate and direct answers to questions or concerns.

Hearing about tougher economic times to come in the State of Alaska why would we want to create an unknown amount of additional costs?

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Enright". The signature is written in a cursive, flowing style.

Harold Enright
President

Julie Smith
P.O. Box 81
Ester, Alaska 99725
907-479-8144
jsmith@mosquitonet.com

Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resources Committee

Sent via email

March 25, 2014

Honorable Senators and Representatives,

This is the third letter I have written to you related to SB 211. The first letter raised several constitutional questions and provided a list of some practical implementation questions related to the bill. The second letter attempted to connect the dots of how the flow of money and management responsibility would change as a result of SB 211. In some ways, this letter is a follow up to the most recent letter, as further reflection has helped me recognize that a good deal of the confusion related to SB 211 results from the lack of a fiscal note that details the impact this legislation would have on the budgets of DOT, DNR, and the State General Fund. But before I get to that question, I want to express the reason I care enough about SB 211 to keep writing to you about it.

I have many friends and colleagues who work at both DOT and DNR in Fairbanks. Over the years, both agencies have earned my respect and gratitude. I appreciate DOT for its can-do attitude and ability to provide needed infrastructure in Alaska. Every time I see DOT employees working road construction or happen to notice a DOT vehicle driving down the road, I am grateful for the monumental work DOT accomplishes every day in creating and maintaining Alaska's transportation infrastructure. At the same time, I appreciate DNR's role in ensuring that the complex web of rights and responsibilities related to land use in Alaska is protected for the benefit of all Alaskans. In its role as land manager, DNR's mandate provides an expanded focus that looks beyond a current project and includes a wide range of multiple uses and environmental impacts.

I am concerned that SB 211 would upset the existing balance between DOT and DNR in ways that would degrade the constitutional and environmental protections currently embedded in Alaska's land management system. I am especially concerned about the provisions that would diminish DNR's management role or transfer title and vest control of material sites to DOT (Sections 3, 5, 8, and 13). Well-managed material sites provide a multitude of benefits to Alaskans. Material sites that are not managed well can diminish private property values and cause significant economic and environmental harm. This is especially true in material sites located within rivers and floodplains.¹

¹ See [Hungry Water: Effects of Dams and Gravel Mining on River Channels](http://www.wou.edu/las/physci/taylor/g473/refs/kondolf_97.pdf) by Mathias Kondolf at http://www.wou.edu/las/physci/taylor/g473/refs/kondolf_97.pdf.

DNR plays an important role in identifying these issues and finding solutions that provide DOT with the gravel it needs to maintain Alaska's infrastructure while also protecting Alaska's land and resources for current and future generations.

While I understand DOT's frustration with onerous levels of oversight, I am concerned that the pendulum is swinging too far in the opposite direction. In 2009 DOT acquired the authority to conduct its own NEPA reviews for most of its federally funded projects.² In 2011, the Alaska Coastal Management Program was dissolved, relieving DOT of significant state oversight of many material sites located in rivers and floodplains. Now DOT is attempting to diminish or eliminate DNR's management role, and this is happening in the wake of significant statutory changes in 2012 that were specifically designed to streamline material sales in Alaska. Given these recent changes that reduce the role of other agencies in DOT projects, it seems to me that SB 211 goes too far.

These are the reasons I keep writing to you about SB 211, but I also have concerns about the bill itself. I've already expressed many of these concerns in my first two letters. As I've spent time thinking about the bill and wrestling with the impact it will have, I realized that one reason it's so difficult to understand is because the presentation of the bill has not included an accounting of the fiscal changes that will result to DOT, DNR and the State General Fund as a result of the bill:

- Sections 3, 5, and 8 of the bill require surveys and title transfers of the hundreds of parcels of state land involved in airports, highways, public facilities and material sites included in the bill. What is the expected cost for obtaining these surveys and conveyances of title?
- Section 13 changes the fiscal management of material sales in Alaska so that DNR would no longer charge DOT or DOT contractors for material. How much money is involved? Where will the money go that is no longer paid to DNR? Will DOT simply keep these funds in its own budget? If so, is DOT required to provide an accounting of how SB 211 shifts funding from DNR and the State General Fund to DOT? If there is some other fiscal impact that will result from SB 211, what is it? What is the fiscal impact of SB 211?

AS 24.08.035(c) states that fiscal notes attached to bills must include, among other things, the fiscal impact on existing programs and a line item detail of the fiscal impacts. In my research related to this bill I have attempted to glean an understanding of the fiscal impact of SB 211, and have been unable to do so because the fiscal notes attached to the bill indicate there will be no fiscal impact. I therefore respectfully request that the bill be referred to the Legislative Finance Division for a fiscal analysis. I also request an opportunity to provide public comment to the bill after that analysis has been completed, and therefore request that the Transportation Committee hold the bill until such time as that opportunity becomes available.

I appreciate the opportunity to provide comments in my capacity as a private citizen and resident of the State of Alaska. Thank you for your time and attention.

Sincerely,

Julie Smith

² http://www.dot.alaska.gov/stwddes/dcspubs/assets/pdf/directives/attach/6004_ch1_120412.pdf

North Slope Borough -

PLANNING AND COMMUNITY SERVICES DEPARTMENT



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Barrow, AK 99723
☎ (907) 852-0320
Fax: (907) 852-5991
Email: Rhoda.Ahmaogak@north-slope.org

Rhoda Ahmaogak, Director

March 21, 2014

The Honorable Dennis Egan
Alaska State Senate
State Capital Building
Juneau, Alaska

Subject: Senate Bill 211

Dear Senator Egan:

This letter is to offer comments and recommendations from the North Slope Borough Planning Department regarding Senate Bill 211, an Act providing the Department of Transportation & Public Facilities with numerous authority regarding land, easements, materials, and other matters.

First, please let me take this opportunity to thank you and your office for taking the time to consider our comments and interests.

Our primary concern is with Section 15 of the bill. This section authorizes the transfer of the surface estate, including material site development, at Franklin Bluffs and Happy Valley on the Dalton Highway from the Department of Natural Resources to the Department of Transportation & Public Facilities. The concept of a development node at these locations is undermined if the existing gravel pads are given to DOTP&F, and the NSB is left with bare tundra.

There is a long history of efforts between the North Slope Borough (NSB) and the Department of Natural Resources (DNR) towards completing the transfer of title to the NSB as a municipal land entitlement. As recently as January of this year, NSB staff met with DNR staff to discuss the status of this process. The Borough considers these two sites along the Dalton Highway among our top priorities for conveyance, but contamination at the sites had stalled consideration originally.

It came as a complete surprise to read in Section 15 of Senate Bill 211 that the Department of Transportation & Public Facilities (DOT&PF) was seeking the conveyance of the same property at Happy Valley and Franklin Bluffs. In addition, we don't understand why there is a desire to establish state airports at these locations when there are already state airports located in the vicinity.

The NSB is willing to listen and try to obtain a better understanding of the goals of the DOT&PF. Until we are able to reach that understanding, we would respectfully request consideration by the Senate Transportation Committee towards entirely removing Section 15 and section 13 from Senate Bill 211.

The NSB, DOT&PF and DNR are all partners in the management of the Dalton Highway corridor. Issues related to this partnership need to be resolved through a collaborative process and not through a legislative designation that prevents public involvement. We need to tackle policy considerations together, not separately, to ensure that development nodes are in place for the next large scale project in the corridor.

We would also like to offer some comments regarding other sections of Senate Bill 211.

Section 1 of the bill adds powers to DOT&PF for state airport operations. With respect to issues of land and gravel use, SB211 ignores that there are numerous examples of municipal airport operators who may desire similar authority. We would be happy to discuss this potential with DOT&PF and the Transportation Committee if there is an interest in pursuing this idea.

Sections 2, 3, 4, and 5 broaden DOT&PF's powers over land disposal, which is currently an authority of DNR. Under Sections 3 and 5, the department is given the authority to use gravel that may be contrary to local land use codes, and also fails to protect public interests related to land use and asset disposal. For example, it does not appear that DOT&PF will be subject to the requirements of a Best Interest Determination.

Sections 6, 8, and 9 relate to the Dalton Highway. There may be some inconsistencies between the authorizations in these sections of SB211 with the Dalton Highway Master Plan, and also with NSB land entitlement selections. These issues need to be resolved through the ongoing municipal entitlement process, not this way. These sections appear to provide eminent domain powers for one department of the State over another.

Section 10 appears to allow DOT&PF to determine that a sale of state land is in the public's best interest without public input. Blanket public interest findings without public input is generally not a good process. Perhaps the Transportation Committee and DOT&PF could consider how to develop standards for a public disposal process.

Section 13 appears to be inconsistent with NSB local land use code (Title 19), and also is void of public input on material sales. NSBMC discourages development of multiple material sites which has been DOT&PF's practice along the Dalton Highway. Perhaps this authority should be clarified to be subject to local land use codes and processes.

Page 3

Thank you for the opportunity to offer comments on SB211. We appreciate the efforts of the Senate Transportation to review this bill, and we are willing to discuss the points of this letter with DOT&PF.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rhoda Ahmaogak', written in a cursive style.

Rhoda Ahmaogak, Director
Department of Planning
North Slope Borough

CC: Office of the Governor
DOT&PF Commissioner Kemp
Senator Donald Olson
Representative Ben Nageak

March 19, 2014

House Transportation Committee
c/o The Honorable Peggy Wilson, Chair
State Capitol
Juneau, Alaska 99801

RE: Additional Comments on House Bill 371 – State Land and Materials

Dear Members of the House Transportation Committee:

Thank you for the opportunity to provide additional comments on House Bill 371 – “State Land and Materials”. These comments follow up on issues raised in my letter dated March 12. Where appropriate, I refer to DOTPF’s responses contained in two letters dated March 13, 2014 from DOTPF Deputy Commissioner Kim Rice, one letter to Representative Wilson and the second to Senator Egan.

In my previous letter to the Committee, my comments were grouped into six topics. I will address them here in the same order.

1. Section 13 of HB 371 allows DOTPF to extract material, including gravel, from any existing material pit on state land even if the site was developed by another party for a different purpose. HB 371 allows DOTPF to take material from existing pits with no protection for existing, valid state material sale contracts. This is especially a concern on the North Slope where large gravel pits have been developed by private industry on state land to support oil and gas activities. Under Section 13, DOTPF can take gravel from these pits without regard to existing contractual rights of North Slope producers. Under other provisions of the bill, these pits could be selected by DOTPF and DNR would be required to transfer these privately developed pits to DOTPF.

DOTPF’s response in the first bullet of their letter to Representative Wilson misses my point entirely. While DNR could still sell material to the private sector, DNR has no ability to limit how much material DOTPF can take from these existing pits. Hence there may be insufficient material resources to fill existing contractual obligations and DNR would have no control over how much material may be available for future sales to other parties.

2. The bill ignores and allows DOTPF to override competing land claims, including potentially higher and better uses for the state lands at issue. This is particularly relevant regarding gravel and material resources, as sites with good gravel may also be good sites for schools, other public uses, or private development.

Neither of DOTPF’s letters address the issue of competing uses for the land. HB 371 requires that if DOTPF requests the land, DNR “shall” transfer it regardless of whether DNR, a municipality, or the private sector has identified the land as having a higher, better and potentially more important or valuable use.

The first bullet point in DOTPF's letter to Senator Egan argues that DOTPF's planning process adequately factors in such considerations. While this may be true for highway ROWs, DOTPF's planning process often does not identify specific material sources for its projects in advance, nor does DOTPF have a process for public input when selecting material sites needed for ongoing highway maintenance.

The fourth bullet of DOTPF's letter to Senator Egan addresses only one specific example of where this is a potential issue - the North Slope Borough's land selection at Happy Valley, and there it incorrectly interprets the state municipal entitlement statute. DOTPF's letter notes that municipalities can only select land that is "vacant, unappropriated, and unreserved", (VUU). The letter then goes on to state "because of this restriction, state transportation infrastructure is not normally available for municipal selection". This second statement is problematic for two reasons: first, the statutory definition of VUU land in AS 29.65.130(10) does not prevent the Borough's selection of state transportation infrastructure unless it is "set aside by statute for one or more particular uses or purposes" (the language in the statute) or classified under DNR's land classification statute as non-VUU. The airstrip at Happy Valley does not meet the statutory definition of non-VUU land. Second, the Happy Valley airstrip is not currently administratively reserved for DOTPF. It is on state land managed by DNR. DOTPF only has a pending application, as does the Borough. This legislation requires DNR to transfer the land to DOTPF without addressing the Borough's land selection.

3. The bill provides no mechanism where DNR can address public concerns with the proposed use, access issues, and conflicts with adjacent landowners and users. DOTPF's second bullet in its letter to Senator Egan addresses this issue, but the process DOTPF explains in the letter is not in the legislation. The legislation does not specifically provide DNR with an opportunity to respond to DOTPF's request other than to approve it. If there is a process it is left entirely to DOTPF's discretion to decide if the concern should result in change to their request, rather than the public land manager DNR.
4. The fourth point in my March 12 letter addresses the provision regarding Reciprocal Easements (Section 16 of HB 371). The proposed Committee Substitute introduced at the March 18 House Transportation Committee hearing satisfactorily resolves my concern by deleting the provision that implied additional easements were conveyed to the US Forest Service.
5. The Zero fiscal notes are unrealistic, as this bill will significantly add to DNR and DOTPF's workloads and costs.

The fifth bullet in DOTPF's letter to Representative Wilson partially addresses this issue, but only as it pertains to DOTPF land disposals and land acquisition for material sales. DNR has issued hundreds of authorizations to DOTPF (ROWs, material sales and interagency land agreements) for use of state land. If DOTPF requests that DNR transfer title of the surface estate to DOTPF for all or many of these existing authorizations, there will be a significant increase in DNR's workload. In addition, the land survey responsibilities required in the new AS 02.15.070 (c)(4)(for airports); AS

19.05.080(b)(4) (for highways); and AS 35.20.010(b)(4) (for public facilities) will be costly.

An additional comment not in my previous letter arises from DOTPF's comment at the very bottom of page 1 of the March 13 letter to Senator Egan that reads "DNR has never denied a DOT&PF request for public domain land to be incorporated into an infrastructure project". If so, then why is this legislation even necessary as DOTPF has been able to develop projects on state land without having the surface estate ownership?

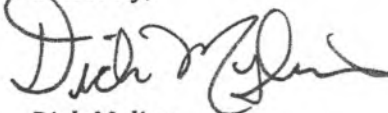
Finally, transfer of title to the surface estate under roads, airports and material sites/gravel pits raises a host of new issues, including:

1. The bill requires DNR to transfer "surface estate" a term that I do not believe is defined in state law.
2. If existing state DNR managed land is transferred to DOTPF, how will DOTPF authorize and manage other non-DOTPF uses of the DOTPF owned land? For example, for highways, DNR currently grants a ROW, but DNR retains ownership of the land and is the agent for authorizing other uses. If DOTPF becomes surface owner, they would be responsible for managing, determining fees, and permitting other surface uses of that land. For example, the Trans Alaska Pipeline crosses the Dalton Highway and Richardson Highway numerous times. If DOTPF owns the highway ROW, they will then become the manager for short segments of the pipeline, adding another state agency to the administration of the pipeline ROW. Similarly, any future gas line that crosses a highway corridor owned by DOTPF would need to get a separate authorization from DOTPF.
3. The bill does not specify the width of highway corridors that DOTPF can request, nor does it define what is "Reasonably necessary". DOTPF will define "reasonably necessary", and under the legislation could select and DNR would be required to convey large tracts of state land for potential future transportation routes such as the Northwest Access corridor. This could significantly complicate and compromise the future use of the adjacent lands that remain in DNR management.

I urge the committee to either reject, or significantly revise, House Bill 371 as this legislation does not protect the public interest in state lands.

I thank the committee for the considering these concerns.

Sincerely,



Dick Mylius
3018 Alder Circle
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907-748-7471

cc: Sean Lynch, Department of Law
John Bennett, DOTPF
Ed Fogels, DNR

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Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resources Committee

Sent via email

March 18, 2014

Honorable Senators and Representatives,

It has been a struggle for me to understand SB 211. I shared many of the questions that have come up for me related to this bill in written comments I submitted yesterday morning. This evening I listened to the audiotape of the HB 371 Transportation Committee hearing that occurred earlier today. A significant part of that meeting was focused on legislators attempting to understand how SB 211 would impact the flow of money related to material sales. The conversation was not easy to understand. Listening to the audio, I was confused. It sounded like many others were also confused. Several representatives mentioned they felt the conversation was circular, and they didn't really understand what was being said. I felt the same. There was a moment of clarity for me, however, in a very brief conversation that took place between DOT Right of Way Chief John Bennett and Representative Feige. It happened so fast that I almost missed it. I went back to listen again, and then decided to type out what was said, just to make sure I understood it correctly. Here are my notes of what was said along with the time markers of the audio recording:

2:47:04

Representative Feige: How does this [the flow of money related to material sales] apply in projects that are funded by the federal government?

Mr. Bennett: Most of our projects are funded through the federal government and so basically we are using federal dollars to pay this 50 cent per cubic yard fee that goes to DNR and then for the most part ends up in the General Fund.

Representative Feige: So the process still gets you basically more legs on the federal dollars to take in for any given project?

Mr. Bennett: That's correct.

Representative Feige: Thank you.

2:47:47

I am grateful for this testimony because for the first time I feel that I might understand SB 211. Since this bill has been so confusing, I will outline my current understanding below. I hope someone who knows more about SB 211 than I do will provide any needed corrections.

Current Material Sale Funding and Work Flow								
Federal Government initiates project funding that includes paying DOT \$\$\$ for gravel	→	DOT passes \$\$\$ to contractors for contractor gravel costs	→	Contractors pass \$\$\$ to DNR for gravel fees	→	DNR passes \$\$\$ to State General Fund	→	State General Fund receives \$\$\$
Federal Government Funds Projects	→	DOT, Contractors and DNR are ALL "middle men" between federal and state governments in a flow that results in the federal government paying the state government for state gravel resources for federally-funded projects.					→	State is paid for state resources that are used in federal projects
		DOT Plans State Projects		Contractors Implement Project Plans		DNR Manages State Resources		

SB 211 Material Sale Funding and Work Flow			
Federal Government initiates project funding that includes paying DOT \$\$\$ for gravel	→	DOT receives \$\$\$	
		DOT Plans State Projects	Contractors Implement Project Plans

Once again, I appreciate the opportunity to provide comments in my capacity as a private citizen and resident of the State of Alaska. Thank you for your time and attention.

Sincerely,

Julie Smith

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907-479-8144
jsmith@mosquionet.com

Alaska Senate Transportation Committee
Alaska House of Representatives Transportation Committee
Alaska House of Representatives Resources Committee

Sent via email

March 17, 2014

Honorable Senators and Representatives,

I am writing to provide written comments in response to Senate Bill 211 and House Bill 371, relating to state land and materials. To provide a bit of context for my comments, I would first like to let you know that I have been a resident of the State of Alaska for over thirty years. During this time I have served the Fairbanks community as an attorney, mediator, non-profit director, and university administrator. I currently work as a Natural Resource Specialist for the Department of Natural Resources (DNR) in Fairbanks. These comments are offered in my capacity as a private citizen and resident of the State of Alaska.

I have listened to the committee hearings that have been held so far. I was grateful to hear legislators asking questions about the bill. I also appreciated hearing the testimony of Dick Mylius and then later reading the written testimony of Chris Milles. As I started jotting down my concerns related to SB 211¹, what emerged was a list of questions. I will provide that list at the end of my comments, but first I would like to summarize my understanding of parts of the bill and outline the resulting constitutional questions that concern me.

SB 211 will result in a dramatic change in the ownership and management of thousands of acres of state land.² SB 211 requires that in less than a year's time, DNR will transfer title of thousands of acres of public domain land to the Department of Transportation (DOT). This fact raises the question of whether a change in ownership and management of public domain land from DNR to DOT is in the best interest of the state. A second question is how the transfer of ownership from DNR to DOT would be accomplished. That is, if the legislature decides DOT should own and manage these thousands of acres of public domain land, what is the process that will be used for conveying title from DNR to DOT? This second question is the one I am focusing on here.

¹ For ease of reference, I will refer to both bills as SB 211. My comments include HB 371.

² SB 211 does not specify how many acres would pass from DNR to DOT under the bill, but DOT uses hundreds of material sites on state land ranging in size from several acres to 500 acres, and this is only a fraction of the land included in the bill. For this reason, I assume thousands of acres of land would pass from DNR to DOT under SB 211.

When DNR conveys title to state land it is bound by the Natural Resources section of the Alaska Constitution, including the Public Notice provision located in Article 8, Section 10 of the Alaska Constitution, which provides as follows:

Public Notice. No disposals or leases of state lands, or interest therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

The Alaska Constitution requires that before a disposal of state land, there must be prior public notice. Historically, conveyance of title from DNR to any other entity has been defined as a disposal of state land requiring public notice. But SB 211 creates a new definition of "disposal"³ and uses that new definition to require DNR to convey title of state land to DOT without public notice and without an opportunity for DNR or any other state agency to respond to DOT's current or future requests for ownership of public domain land. SB 211 thus creates a new and unprecedented approach for determining land ownership and management in Alaska. Since the new approach does not adhere to the public notice protections required by the Alaska Constitution, I wonder whether it is constitutional.

A related provision of SB 211 is equally confusing. That provision specifically grants DOT the authority to dispose of the land it receives title to under the bill "according to terms, standards, and conditions established by the commissioner."⁴ This part of the bill acknowledges a disposal is taking place, but is silent regarding the requirement for public notice. In effect, SB 211 requires DNR to convey title to DOT without public notice, and then allows DOT to convey title to any person or entity without the standard of public notice required by the Alaska Constitution.⁵

A third question is whether it is constitutional for DOT to act in the capacity of the Alaska State Legislature in the administration of state public domain land. Article 8, Section 6 of the Alaska Constitution provides as follows:

State Public Domain. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain. (Emphasis added.)

SB 211 gives DOT the authority to unilaterally grant itself ownership of significant parts of the state public domain.⁶ Is the authority to unilaterally determine ownership of the state public domain a legislative authority? If so, is it constitutional to grant that legislative authority to DOT?

³ SB 211 states "the transfer of land or materials under this subsection is not a disposal of state land."

⁴ See SB 211, Sections 2, 4, and 10. Also see Section 12 and the Sectional Analysis for Section 12.

⁵ The public notice standard required for disposals of state land is codified in 38.05.945 and other provisions in AS 38.05. This section of the Alaska Statutes is known as The Alaska Land Act, and was enacted in 1959 in accordance with the public notice requirement of the Alaska Constitution.

⁶ See SB 211, Sections 3, 5 and 8.

In addition to the constitutional questions noted above, I have a number of other questions related to SB 211. They are as follows:

1. What actual land is included in SB 211? Is there a list of parcels or a map showing the land that is included in the bill? How many parcels are involved? How many acres?
2. What parcels of land included in SB 211 are not currently surveyed? What is DOT's plan for surveying these parcels? What is the expected cost for these surveys?
3. SB 211 requires completion of surveys after title has been conveyed to DOT. Is there any precedent in Alaska for conveying title without a survey already in place? What are the foreseeable issues related to clouded title and uncertainty of land ownership and management?
4. The last paragraph of Section 5 of SB 211 states: "within two years after the completion of construction or the opening of a materials site, the department shall prepare and record a record of survey of the property received by the department." Note that "completion of construction" may take decades to accomplish for material sites. What timeline will DOT be required to follow to obtain surveys for its many unsurveyed material sites?
5. How will SB 211 impact funding for DNR and DOT? Would DNR lose funding from loss of material sale revenue as a result of this bill? Would DOT gain a new funding source from selling material from material sites? Section 13 of the bill states DNR would no longer charge DOT for material. Does "DOT" include DOT contractors? Would DOT start charging their contractors or others for material from state material sites? If so, where would those funds go?
6. SB 211 indicates DOT will provide public notice under AS 44.62.175 when it requests title of state land from DNR. How does the public notice DOT would provide differ from the public notice DNR is required to provide for a conveyance under AS 38.05.945?
7. DNR manages for multiple uses of state land. Will DOT manage state public domain land for multiple uses? If so, what legal authority and processes does DOT have in place for multiple use management? How will DOT's management of state public domain land be different from DNR management?
8. Testimony from DOT indicated SB 211 was modeled after a federal law. What law in particular is it modeled after? Does the federal version of the law provide opportunities for other agencies to respond to DOT's request for title to land? What level of public notice and involvement is provided under the federal version of the law?

These are the questions that come up for me related to SB 211. I appreciate the opportunity to participate as a private citizen in the legislative process. Thank you for your time and attention.

Sincerely,

Julie Smith

Rebecca Rooney

From: Dick Mylius <rhmylius@aol.com>
Sent: Thursday, March 13, 2014 2:27 AM
To: Rep. Eric Feige; Rep. Peggy Wilson; Rep. Lynn Gattis; Rep. Craig Johnson; Rep. Doug Isaacson; Rep. Bob Lynn; Rep. Jonathan Kreiss-Tomkins
Cc: sean.lynych@alaska.gov; johnf.bennett@alaska.gov; ed.fogels@alaska.gov
Subject: House Bill 371 - State Land and Materials
Attachments: Testimony of Dick Mylius on HB 371.docx

To Members of the House Transportation Committee: I was unable to testify at the March 11 House Transportation Committee hearing on House Bill 371 (State Land and Materials) as the time conflicted with the Senate Transportation Committees hearing on the same bill. Attached are my detailed comments on HB 371.

I urge the committee to reject or require significant revisions to HB 371 as it does not protect the public interest in state lands. The bill takes away any authority of DNR to approve, modify, condition, or deny any request from DOT for land that DOT desires for transportation and public facilities, including gravel and material sites.

As I know you are busy - I'll highlight the six main points that are explained in much greater detail in the attached letter:

1. Section 13 of HB 371 allows DOTPF to extract gravel from any existing gravel pit on state land even if the site was developed by another party for a different purpose and with no protection for existing, valid state gravel sales;
2. The bill ignores and overrides competing land claims, including potentially higher and better uses for the state lands at issue (particularly relevant regarding gravel and material resources);
3. The bill provides no mechanism to address public concerns with the proposed use, access issues, and conflicts with adjacent land owners and users;
4. The provision regarding Reciprocal Easements (Section 16) conveys easements to the US Forest Service on tidelands and submerged lands that are important for public access and appears to do this without the Constitutionally required public notice;
5. The Zero fiscal notes are unrealistic as this bill will significantly add to DNR and DOTPF's workloads and costs;
6. To date many parties directly and potentially impacted by this bill, including private and public operators and users of gravel pits on state land have not been informed of this legislation and how it may impact them.

Sincerely, Dick Mylius

March 12, 2014

House Transportation Committee
c/o The Honorable Peggy Wilson, Chair
State Capitol
Juneau, Alaska 99801

RE: Comments on House Bill 371 – State Land and Materials

Dear Members of the House Transportation Committee:

I would like to offer comments on House Bill 371. I was unable to testify at the March 11 House Transportation Committee hearing on House Bill 371 as it conflicted with the Senate Transportation Committee hearing on the Senate's companion legislation (SB 211) where I did testify.

I urge the committee to either reject, or significantly revise, House Bill 371 as this legislation does not protect the public interest in state lands, and one section, Section 16, is either vague or unconstitutional.

For background, I am currently mostly retired, but worked at the Department of Natural Resources, Division of Mining, Land and Water for 29 years. These comments represent my personal views but are based on first hand knowledge of these issues.

I agree that state land should be used, whenever possible, to meet the transportation and facility needs of Alaskans. I also agree that the process to transfer state land from DNR to DOT is at times cumbersome. I am also aware that DOT is sometimes troubled by decisions made regarding land it desires and the conditions that DNR may attach to the land. However, this legislation removes any discretionary ability by DNR to protect valid existing legally binding gravel sale contracts, protect valid claims by other parties to the land in question, address public concerns, or accommodate competing land and resource interests.

The bill essentially says "what DOT wants, DOT gets". The bill requires that if DOT asks the Commissioner of DNR to transfer a parcel of state land for an airport, road, gravel pit, or other use, DNR will transfer the land within 4 months. Section 3 for airports, Section 5 for highways, Section 8 for public facilities all say that DNR "shall" transfer these lands. DNR cannot say no. These sections also require DNR to transfer any gravel or other materials on state land DOT requests for the transportation or public facility.

Why is this a problem? It is a problem because state land isn't just for transportation uses, in fact the Constitution directs otherwise. Sometimes sites selected by DOT have prior competing land claims, higher and better uses, or public interests. My comments address six key points as described following.

1. Section 13 of HB 371 allows DOTPF to extract gravel from any existing gravel pit on state land even if the site was developed by another party for a different purpose and with no protection for existing, valid state gravel sales.

Section 13 gives DOT carte blanche to take gravel from any gravel pit on state land, with DNR unable to "otherwise restrict", or maybe more correctly, it should read "in any way restrict" what gravel or how much. This section raises at least two major concerns.

First, many gravel pits on state land are developed by and the gravel sold to private developers, municipalities, other state agencies, federal agencies or others. For example, most gravel pits on the North Slope were developed specifically by the oil industry or various contractors, and this new AS 38.05.030 would allow DOT to take whatever it wants out of these pits and offers no protection for rights to gravel that may already have been sold by DNR to a private party. DNR cannot, under this provision, protect the rights of the holder of a valid pre-existing gravel sale. DOT may tell you this is not their intent with section 13, then you should ask why this provision is in the bill and where in Section 13 these concerns are addressed. Note that Section 13 is not tied to the transfer of land to DOT and is not subject to the "valid existing rights" language found elsewhere in the bill.

A second concern with Section 13 is that it gives DOT this carte blanche authority on all "state land", not just "state public domain" land as was used elsewhere in the bill. "State land" includes land set aside as State Parks, State Wildlife Refuges and other legislatively protected lands. This wording is not consistent with the introductory remarks made at Tuesday's Senate hearing where the committee was assured that the bill only applies to "state public domain" land.

2. Prior Competing Land Claims. As the state's multiple use land manager, DNR has requests for state land from many parties and in some cases, outright obligations to parties such as municipal entitlements under AS 29.65.

DOTPF will tell you (as they testified in Senate Transportation) that the wording "subject to valid existing rights" in sections 3 (page 3, lines 3-4), Section 5 (page 4, lines 3-4) and Section 8 (page 5, lines 15-16) protects competing land claims. It does not protect municipal land selections or other conflicting requests for the land. As I previously noted, under HB 371 DNR is not given the option to reject a DOT request. If the land is conveyed to DOT, it is no longer available for transfer to a municipality under a municipal entitlement selection. Furthermore, state land, such as potential gravel pits, may have been requested for other public uses by state agencies, these requests would be rendered moot once DOT applies for and automatically receives this land. The DOT use (such as a gravel pit) may also not be the economically most valuable use of the land. Again, under HB 371, DNR doesn't have the ability to deny the DOT request even if there is a higher and better use of that land, such as land needed by a school district for a public school. The only valid existing uses

protected by the current language would be any permits, leases or ROWs that DNR had allowed prior to the DOT request.

In the North Slope Borough specifically, DOT has existing and future interest in certain gravel pits and the two airstrips at Happy Valley and Franklin Bluffs. Section 15 of HB 371 specifically directs DNR to transfer the two airstrips and adjacent lands to DOT. I believe that these lands are still selected by the North Slope Borough as part of its municipal land entitlements from the state. If the intent of the legislature is to reject the municipal selections of these lands, it should state so in this legislation and notify the North Slope Borough in advance.

The state has obligations to fulfill municipal entitlements of other municipalities as well, including a longstanding agreement with the Municipality of Anchorage regarding the Municipality's possible future rights to certain parcels, including parcels adjacent to Anchorage International Airport. Future land transfer request from DOT could be in conflict with this longstanding agreement and the legislation takes away does DNR's ability to address these issues.

3. Public concerns regarding DOT's proposed use, access issues and conflicts with adjacent landowners and users. DNR is required to consider all potential uses when determining the best use for a parcel of state land. This bill would not allow DNR to address conflicts with adjoining uses, competing and perhaps higher and better uses of the land, or access concerns. Under the existing process, DNR looks at adjacent land uses, competing requests and uses, and access concerns prior to transferring land to DOT. This bill would eliminate this process. For example, DOT applied to DNR for a gravel pit at Coldfoot that was adjacent to residential properties. DNR worked with DOT to either find a better site, or require DOT to retain buffers and restrict hours of use for the site. DOT was not particularly receptive to these concerns.

Under the existing process, DNR can reserve easements for public use through DOT sites to ensure that access is not blocked by public facilities. DNR can also condition a transfer to DOT with a requirement to provide alternative access. Again, under HB 371 DNR could not attach such conditions to the land transfer. Public access would be lost.

4. Reciprocal Easements Provision. Section 16 of HB 371 requires special attention by the Committee. The reciprocal easements referred to stem from a little known provision in federal legislation passed in 2005 known as SAFETEA-LU. The language in the federal law and Section 16 of HB 371 refer to map 92337. The map shows approximately 135 public access and log transfer sites on state tidelands that were to be transferred to the US Forest Service (USFS) in return for a number of transportation and utility corridor easements across Tongass National Forest land. Several years ago, DNR, DOT and the USFS agreed on a public process to establish the easements. To date, according to DNR, 66 sites have approved easements but another 67 do not. Many of the easements already processed were

existing USFS facilities with permits. I believe that many of the remaining sites do not have any existing facilities and some are important public access sites that should remain in state, not USFS, management. Also, the process required the Forest Service to submit an actual application to DNR to better define the exact area they wanted (Map 92337 is just dots on a map of SE) and I believe they have not applied to DNR for the 67 unprocessed sites.

Regardless of whether or not easements should be granted to all 135 sites, the legislation (page 8, lines 19-22) appears to grant easements to the US Forest Service on the 67 sites that do not currently have easements without providing public notice as required by Article VIII, Section 10 of the Constitution.

5. Fiscal Impact. Regarding the bill generally – the legislation has two zero fiscal notes. It is hard to believe that there is no cost to issue these envisioned land transfers such as the easements under Section 16 or for any of the other land transfers envisioned by this bill (the bill has a zero fiscal note from DNR and DOT). As you know, DNR has been trying to reduce its backlog of work; this adds a bunch of work to DNR with no additional resources to address the added workload.

6. Lack of Notice to affected parties. When DOT was asked at the Senate Transportation Committee if the North Slope Borough, whose municipal land entitlement is directly impacted by this legislation, had been consulted in drafting this legislation or informed that it exists, the answer was “no”. This bill also potentially impacts the rights of any private or public entities that hold an existing gravel sale on state land, including North Slope oil field operators. I do not believe they are aware of this legislation and how it could impact them. The bill will also impact existing private owners of gravel resources as they will be at a competitive disadvantage compared to the DOT owned pits. Based on the limited amount of testimony on March 11, I doubt that these parties are aware of this legislation.

I thank the committee for the considering these concerns.

Sincerely,

Dick Mylius
3018 Alder Circle
Anchorage, Alaska 99508
907-748-7471

cc: Sean Lynch, Department of Law
John Bennett, DOTPF
Ed Fogels, DNR

-----Original Message-----

From: Chris Milles [mailto:millesric@alaska.net]

Sent: Wednesday, March 12, 2014 2:18 PM

To: Sen. Click Bishop; Sen. Dennis Egan; Sen. Fred Dyson; Sen. John Coghill; Sen. Cathy Giessel; Sen. Pete Kelly; Sen. Peter Micciche; Sen. Lesil McGuire; Sen. Anna Fairclough; Sen. Hollis French; Rep. Eric Feige; Rep. Peggy Wilson; Rep. Tammie Wilson; Rep. Dan Saddler; Rep. Mike Hawker; Rep. Lynn Gattis; Rep. David Guttenberg; Rep. Craig Johnson; Rep. Kurt Olson; Rep. Doug Isaacson; Rep. Paul Seaton; Rep. Scott Kawasaki; Rep. Bob Lynn; Rep. Geran Tarr; Rep. Bob Lynn; Rep. Jonathan Kreiss-Tomkins; Rep. Steve Thompson; Rep. Pete Higgins; Dana Owen

Cc: ed.fogels@alaska.gov; wyn.menefee@alaska.gov; brent.goodrum@alaska.gov;

jeanne.proulx@alaska.gov; rhmylius@aol.com

Subject: HB 371/SB 211 Comments

Dear Senators and Representatives:

As a retired State of Alaska, DNR land manager with over 33 years of service, and as a born and raised Alaskan, I offer the following comments on SB 211 and HB 371.

I would like to begin my comments by providing some perspective. Any mention to DNR in this email is meant to reflect my perspective of DNR based upon my experience, not the Department's perspective.

The Department of Natural Resources is a multiple use state agency. As such it evaluates and manages the land and resources in "trust" for the residents of Alaska and all state agencies. An example of this is that the DNR evaluates the impacts of all actions on state land, including the impacts on neighboring residents and commercial uses, access concerns, fish and wildlife impacts, and others in determining whether or not an action is in the state's interest.

The DOT's philosophy is that if a project is funded by the legislature then it is in the state's best interest and whatever needs to be done to facilitate that project is therefore in the state's best interest as well. This point of view reflects DOT's role as an agency that is highly focused and project-oriented. DOT is not a multiple use agency set up to address the multiple use resource issues DNR is constitutionally required to address. It is simply not DOT's role or function to consider multiple land issues.

DNR as a state agency should support projects that are funded by the legislature and facilitate the project, but should do so while creating a process for individuals and companies impacted by DOT projects to participate in determining how those projects can move forward in ways that are beneficial not only for DOT's project, but also for other people using Alaska's resources. DNR's management of material sites, for example, makes it possible for DOT to extract the material they need, while also providing material from the same sites to other agencies, individuals, and industry. The DNR has supported multiple use by encouraging that most sites remain ungated for public recreational use. DNR also makes it possible for the Division of Forestry to use material sites to access state land for timber sales and to provide staging areas for fire suppression efforts, and for the Division of Parks to gain access to any material they may require. DNR is also involved in establishing specific operating requirements in material sites like limiting hours of operation in sites located next to campgrounds. These are all examples of the ways DNR's multiple use management supports DOT projects while also protecting other uses of state land.

The DNR provides DOT with a variety of authorizations for their activities. These include easements/rights-of-ways for highways and access to material sites, Inter-Agency Land Management Assignments or ILMAs for airports, harbors, and maintenance sites, and authorizations for material sites. In recent years statute changes have significantly streamlined the process for material sales. These changes have already reduced the time required to provide DOT with material sale contracts. While some DOT material sales continue to take longer to process, these sites typically present complex issues because they are located within rivers or floodplains. DOT could significantly reduce DNR's time to process these material sale applications by respecting the process and providing the agencies with hydrological information outlining the expected impact of their activities in rivers and floodplains. This analysis is required under both federal law for federally-funded projects and state policy for state-funded projects, but is rarely provided by DOT. Delays in completing DOT applications for material sales in rivers and floodplains is often due to the significant problems that have already developed in these sites and the need for additional information from DOT to address the hydrologic issues that arise in in-river and floodplain sites.

Before I retired, DNR and DOT were directed by the Governor's Office to work on ways to streamline the material sale process. DOT wanted DNR to, in short, provide unlimited material for DOT projects for an unlimited time frame as the legislature provided funding for a highway project, therefore anything associated with that project was in the state's best interest. Many options were discussed to include transferring title to DOT for sites and/or authorizing sites under an ILMA. The DNR, DMLW, Northern Region evaluated approximately 20 material sites for transfer under an ILMA. The process included ADFG, Forestry, and Parks. Of the 20 sites, DNR determined that one or two sites were without issues and could be authorized under an ILMA to DOT.

The other sites had public access issues, ADFG issues such as riparian zones, third party needs for gravel and public use issues that were more suited to DNR management.

The outcome of this project was not to DOT's liking so DOT suggested that another option was to issue DOT a material sale contract with an unlimited term and unlimited volume. Now, it is apparent that DOT would rather not work with another state agency and instead has circumvented the DNR by submitted a bill through the Governors Office that would do exactly what they could not do by working with the state agencies to find a solution. This is extremely convenient for DOT as protocol dictates that DNR staff can not speak freely about the bill as they must support the Governor's bill. As such, it is up to the public to speak to the bill.

The Transportation Committee has already heard testimony from Dick Mylius, a former Director of the Division of Mining, Land and Water.

Dick's testimony is spot-on and should be fully taken into account in deliberations on this bill. This bill gives DOT unlimited and unrestricted use of state land for DOT's purpose and DNR shall transfer to DOT "whatever" DOT wants and desires.

This bill also gives DOT the ability to dispose of state land that it acquires under this bill or return it to DNR. Under existing statutes, DOT returns to DNR any state land it acquired from DNR. This does happen on occasion, but rarely. When it does happen, it is because there is an opportunity to divest DOT's interests that have become complicated by unauthorized third party uses. In order for DOT to divest state property, it would seem appropriate that statutes that parallel DNR statutes related to disposals of state property be set up. In fact, the Alaska Constitution and subsequent statutes and regulations have been developed to articulate what is required for the state to dispose of state land. But then why create a new process for DOT to perform this function when there is an existing state

agency already set up to transfer property to the public for private or municipal uses with existing authorities.

I also want to note for the record that under the bill as currently written, DOT will have authority to enter onto any state land as state land is not defined to preclude legislatively designated areas.

I am not sure what the fiscal note is attached to this bill, but DOT will definitely require additional personnel to properly manage all aspects of this bill. The survey requirements alone are staggering, as most of the hundreds of material sites throughout the state are not currently surveyed. Rhetorically, why not provide DNR with additional funding to properly manage material sites and state land in general rather than strip it of its duties.

DNR is the state agency set up to manage public resources for all of Alaska. It is the multiple use agency that addresses public concerns through an open public process. Granted this takes time to accomplish but doesn't the public deserve that time that it takes to make an informed decision rather than what appears to be a gigantic land grab for DOT for DOT's purposes without any checks and balances.

Given the concerns surrounding this bill, I would request that the legislative branch provide the opportunity for additional public comment or table the bill until a later session. The bill was introduced on March 7 (Friday), and public testimony was held on March 11 (Tuesday).

I doubt that many people have had a chance to read the bill or to prepare comments. Given the significant changes to land management proposed by this bill, an additional opportunity for public comment is warranted.

Thank you for your time and again, I strongly suggest that you address the concerns of Dick Mylius as presented in his testimony and follow-up correspondence.

Chris Milles
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Fairbanks, AK 99709
907-978-2293

Dear House Resources Committee members:

As currently drafted, CSHB 371 raises many questions and concerns, and risks creating more complications and uncertainty.

One of my concerns with the bill is in regard to state land assigned, or as proposed under the bill, “transferred,” from DNR to DOT&PF. AS 38.05.030(b) provides that Alaska Land Act provisions do not apply to real property acquired by DOT&PF. Conversely, the Act’s provisions do apply to land assigned to DOT&PF by DNR. In addition, the statute requires that lands assigned by DNR to DOT&PF be returned to DNR when they are no longer needed.

CSHB 371 would provide DOT&PF with primary authority over the surface estate of all airport, highway and public facility properties and make the return of assigned or transferred land to DNR discretionary. Among other things, DOT&PF says that the reasons for these changes are that DNR takes too long to dispose of former DOT&PF infrastructure parcels and remnants and has inadequate authority for the disposals.

AS 38.05.035(b)(7) specifically provides DNR with the authority to dispose of right-of-way remnants to an adjoining landowner. If this statute is inadequate, perhaps it could be amended to address the problem – rather than providing a broad grant of authority to DOT&PF over surface estates and overturning a long-standing requirement for certain lands to be returned to DNR for appropriate management or disposal.

I am also concerned about DOT&PF’s interpretation of the state constitution, Article 8, Section 6. In their response to comments, they seem to be saying that any lands managed for government purposes do not need to be managed for multiple uses. I believe it is more complicated than that.

AS 38.05.300 states that, for areas larger than 640 contiguous acres, except by act of the legislature, state land may not be closed to multiple uses, or otherwise classified such that mining activities are precluded. Mining could be precluded when the classification is necessary for “the development of utility or transportation corridors or projects or similar projects or infrastructure.” The statute does not preclude multiple purpose use of land classified for a particular use whenever different uses are compatible.

For example, AS 41.21.110 provides for the closing of the Chilkat State Park to multiple purpose use in conformity with AS 38.05.300. AS 41.21.111 reserves the park areas “from all uses incompatible with their primary function as public recreation and water...” AS 41.21.112 directs the DNR commissioner to designate by regulation the incompatible uses. Presumably compatible uses may continue to be allowed. In other words, the closing of state land used for government purposes to multiple use is not a given – it depends on the statutes for a particular area and the particular use.

The issue of multiple use requirements and how they apply to lands used for transportation and public facilities would require additional review and discussion if the current provisions in CSHB 371 are considered further.

In my comments on the companion legislation, SB 211, I posed several questions regarding how sections 1, 6 and 9 would work in regard to DNR permitting authorities. In their response to comments dated March 31, 2014, DOT&PF provided an explanation. The problem remains that the proposed language in the bill is not clear and could cause confusion in its implementation. Someone reading these statutes should not have to review the bill file and administration's testimony to divine their meaning.

Also in their March 31 response, DOT&PF explains that the proposed amendments are designed to address the overlapping management authorities of DOT&PF and DNR. The department asserts that overlapping authorities and differing missions between DOT&PF and DNR results in "land management paralysis situations."

I believe the differing missions are exactly why DNR should retain its land management authority over state lands used for transportation and public facilities. The different missions ensure that potentially competing land and resource uses are addressed in the public's interest when the state makes use of state land and resources for transportation projects. On balance, the state will achieve better development when the two agencies work together with each representing their respective authorities and missions.

In conclusion, I oppose CSHB 371 as written.

Thank you for consideration of my comments.

Sincerely,

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THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation
and
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April 15, 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:

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, DOT&PF 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



Alaska State Legislature

Representative Peggy Wilson
House District 33

MEMORANDUM

Date: Mar 27, 2014

To: Rep. Eric Feige, Co-Chair House Resources Committee
Rep. Dan Saddler, Co-Chair House Resources Committee

From: Representative Peggy Wilson *PW*

Re: HB 371- State Land and Materials

I would like to request the House Resources Committee schedule HB 371 for a hearing.

HB 371 is collaboration between the Department of Transportation and Public Facilities and the Department of Natural Resources to reduce ambiguity and streamline Rights of way processes between these 2 departments. HB 371 is a no cost solution that will save time and resources (money) for transportation projects.

In addition it will also eliminate contracting requirements between DOT and DNR when accessing road materials for transportation projects.

There will be a reciprocal removal of 55 year lease limit on US Forest Service transportation easements and the DNR's log transfer easements.

Finally DNR will transfer 2 DNR Sites to DOT for use as maintenance stations and airstrips to accommodate recent resource development.

Thank you for your consideration. Please contact my office, or Becky Rooney, my staff, at 465-4858 with questions.