

HB

371

<TARGET><BILL>HB 371</BILL><SUBJECT>HB
371</SUBJECT><COMM>HTRA28</COMM></TARGET>

HOUSE BILL NO. 371

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE TRANSPORTATION COMMITTEE BY REQUEST

Introduced: 3/10/14

Referred:

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 from the Department of Natural Resources to the Department of
4 Transportation and Public Facilities for the construction or maintenance of the state
5 highway system, state airports, and state public buildings and facilities; relating to the
6 lease or sale of certain marine or harbor facilities; relating to the lease or disposal by the
7 Department of Transportation and Public Facilities of rights-of-way, property interests,
8 or improvements that are no longer required; relating to the grant of certain easements
9 over submerged state land to the federal government; relating to the transfer of certain
10 maintenance stations on the James Dalton Highway to the Department of
11 Transportation and Public Facilities; relating to the conveyance of land for right-of-way
12 purposes from the Alaska Railroad Corporation to the Department of Transportation

1 **and Public Facilities; and providing for an effective date."**

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

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

4 **Sec. 02.15.065. Surface estate of state airport land.** The department has
5 primary authority to manage the surface estate of land and property interests acquired
6 or held by the state for an airport, airport access road, or airport-related operations,
7 including land conveyed by the federal government under sec. 35 of the Alaska
8 Omnibus Act of 1959 (P.L. 86-70, 73 Stat. 141). In the exercise of that authority, the
9 department may require terms and conditions that are applicable to a use of the surface
10 estate authorized by the Department of Natural Resources in the administration of the
11 state program for the conservation and development of natural resources on state land.

12 * **Sec. 2.** AS 02.15.070(b) is repealed and reenacted to read:

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

16 (1) transfer the land, property interests, or improvements to the
17 Department of Natural Resources, if requested by the commissioner of natural
18 resources; or

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

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

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

29 (1) the department shall provide public notice of the intended transfer
30 by posting the written determination and preliminary property plan on the Alaska

1 Online Public Notice System (AS 44.62.175);

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

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

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

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

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

17 (1) transfer the land, property interests, or improvements to the
18 Department of Natural Resources, if requested by the commissioner of natural
19 resources; or

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

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

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

30 (1) the department shall provide public notice of the intended transfer
31 by posting the written determination and preliminary right-of-way plan on the Alaska

1 Online Public Notice System (AS 44.62.175);

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

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

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

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

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

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

25 **Sec. 35.10.120. Lease or sale of [MARINE OR] harbor facilities.** The
26 department may lease for a period up to 50 years or may sell for a nominal sum to a
27 municipality [AN INCORPORATED CITY, PUBLIC UTILITY DISTRICT,] or
28 other incorporated area [MARINE OR] harbor facilities constructed or rebuilt with
29 territorial funds or state funds or with territorial or state and federal matching funds.
30 The intent of this section is to allow a municipality [CITIES, PUBLIC UTILITY
31 DISTRICTS, AND OTHER INCORPORATED AREAS] to lease or purchase a

1 [MARINE OR] harbor facility [FACILITIES] so that the municipality [THEY] may
2 enforce municipal ordinances on the harbor facility [THEM] and legally assess fees
3 to meet maintenance costs.

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

5 (b) If the department determines that a part of the state public domain is
6 reasonably necessary for a public building or public facility or as a source of materials
7 for the construction or maintenance of a building or facility, the department shall file
8 with the Department of Natural Resources a written determination and preliminary site
9 plan showing the portion of or interest in the public domain land that the department
10 reasonably needs, subject to the following:

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

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

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

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

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

26 **Sec. 35.20.015. Surface estate of public facility land.** The department has
27 primary authority to manage the surface estate of land and property interests acquired
28 or held by the state for public buildings and public facilities owned or controlled by
29 the department. In the exercise of that authority, the department may require terms and
30 conditions that are applicable to a use of the surface estate authorized by the
31 Department of Natural Resources in the administration of the state program for the

1 conservation and development of natural resources on state land.

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

3 **Sec. 35.20.070. Leasing and disposing of land and property interests.** If the
4 department determines that land, property interests, or improvements are no longer
5 necessary, the department shall notify the commissioner of natural resources of the
6 determination and may

7 (1) transfer the land, property interests, or improvements to the
8 Department of Natural Resources, if requested by the commissioner of natural
9 resources; or

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

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

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

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

24 (d) The [EXCEPT FOR LAND THAT IS REQUIRED TO BE RETURNED
25 TO THE DEPARTMENT UNDER (b) OF THIS SECTION, THE] Department of
26 Transportation and Public Facilities may dispose of real property acquired [BY IT]
27 under AS 02.15.065, 02.15.070, AS 19.05.040(1), (2), and (9), 19.05.080 - 19.05.124,
28 AS 35.05.040(1), (2), and (6) [AS 02.15.070, AS 19.05.040(1) AND (2), 19.05.080 -
29 19.05.120, AS 35.05.040(1) AND (2)], and AS 35.20.010 - 35.20.050. Land conveyed
30 under this section to a municipality for less than fair market value shall be credited
31 against the municipality's entitlement under AS 29.65.

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

2 (h) Notwithstanding the provisions in AS 38.05.550 - 38.05.565, extraction
3 and use of materials from sources and sites owned by the state is not a disposal of
4 materials when used for the construction or maintenance of an airport, highway, or
5 public facility owned by the state. The department may not collect payments, set time
6 limitations, or otherwise restrict the Department of Transportation and Public
7 Facilities from access to a source of materials and a site owned by the state.

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

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

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

14 (2) issue bonds;

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

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

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

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

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

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

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

1 TRANSFER OF CERTAIN MAINTENANCE STATIONS. The Department of
2 Natural Resources shall transfer the surface estate to the access roads, camps, and airstrips at
3 Franklin Bluffs and Happy Valley on the James Dalton Highway to the Department of
4 Transportation and Public Facilities. The transfer of those properties to the Department of
5 Transportation and Public Facilities does not affect or otherwise alter current licenses and
6 permits issued by the Department of Natural Resources for use of those properties. Within 60
7 days after the effective date of this Act, the Department of Transportation and Public
8 Facilities shall notify a person holding a license or permit of the administrative transfer of
9 those properties. Not later than January 1, 2015, the Department of Transportation and Public
10 Facilities shall accept and begin to process permit and license applications through its rural
11 airport permitting program for an activity currently authorized by permit or license by the
12 Department of Natural Resources and normally permitted through rural airport permitting
13 authorities. Other valid permits or licenses issued by the Department of Natural Resources
14 continue according to the terms of the permit or license.

15 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 GRANT OF CERTAIN EASEMENTS OVER SUBMERGED STATE LAND TO
18 IMPLEMENT A RECIPROCAL EXCHANGE. Notwithstanding a provision of state law to
19 the contrary, the easements over submerged land identified on the map numbered 92337 and
20 dated June 15, 2005, and that are part of the reciprocal exchange of rights-of-way and
21 easements enacted into federal law under 119 Stat. 1177 are granted to the United States
22 Forest Service. The easements identified in this section and granted to the United States
23 Forest Service may have a term of years for a period of more than 55 years if the
24 commissioner of natural resources determines the length of the term to be in the best interest
25 of the state.

26 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

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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.

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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 HB371
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HB371-DNR-MLW-3-10-14 Dept. Affected Natural Resources
Title STATE LAND AND MATERIALS Appropriation Land & Water Resources
Allocation Mining, Land and Water
Sponsor House Transportation
Requester HTRA OMB Component Number 3002

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY15 Appropriation Requested	Included in Governor's FY15 Request	Out-Year Cost Estimates				
			FY16	FY17	FY18	FY19	FY20
OPERATING EXPENDITURES	FY15	FY15	FY16	FY17	FY18	FY19	FY20
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		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1007	I/A Rcpts (Other)						
1156	Rcpt Svcs (DGF)						
		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

Estimated SUPPLEMENTAL (FY14) operating costs _____ (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY15) costs _____ (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 Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Brent Goodrum, Director
Division Mining, Land and Water

Approved by Joe Balash, Commissioner
Division Department of Natural Resources

Phone 269-8600
Date/Time 3/10/14 12:00 PM
Date 3/10/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HB371

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 DOTPF.

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 HB371
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB371-DOT-SDES-3-11-2014 Dept. Affected DOTPF
 Title State Land and Materials Appropriation Design, Engineering & Construction
 Allocation Statewide Design and Engineering Services
 Sponsor House Transportation Committee
 Requester House Transportation Committee OMB Component Number 2357

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY15 Appropriation Requested	Included in Governor's FY15 Request	Out-Year Cost Estimates				
			FY16	FY17	FY18	FY19	FY20
OPERATING EXPENDITURES							
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		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)							
1156	Rcpt Svcs (DGF)							
		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 (FY14) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY15) costs** _____ (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? Dec. 31, 2015 Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version.

Prepared by Connie McKenzie, Special Assistant
 Division Office of the Commissioner
 Approved by Mary P. Siroky, Director Administrative Services
 Agency Department of Transportation and Public Facilities

Phone 465-4772
 Date/Time 3/7/2014 2:00PM
 Date 3/17/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. HB371

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 construction materials. The department does not anticipate any negative fiscal impact from this legislation.

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

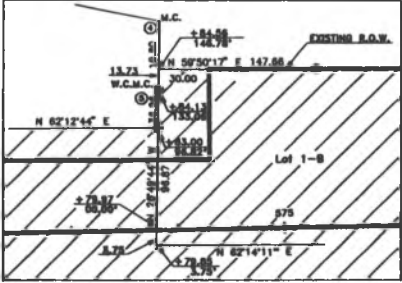
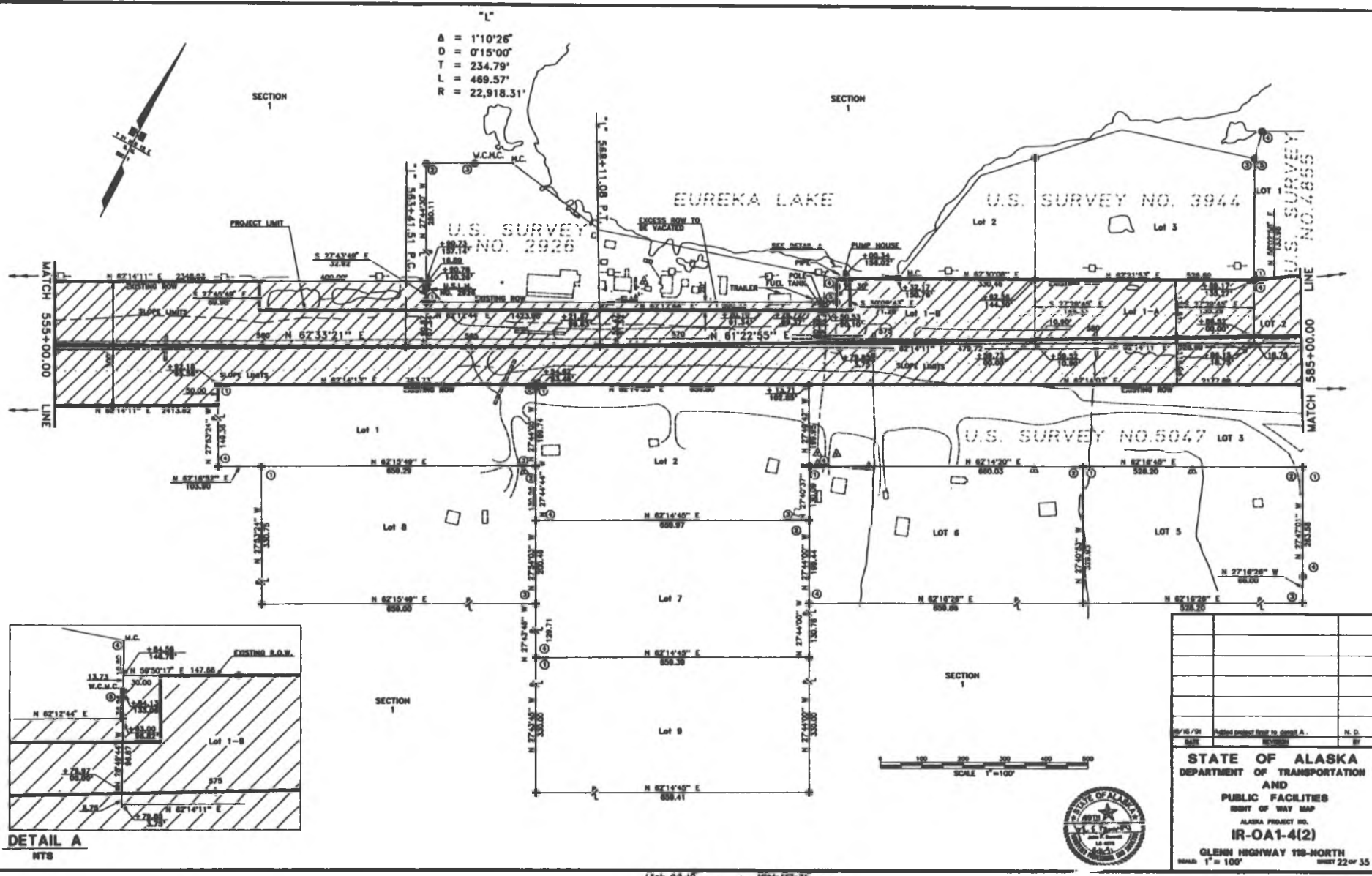
- This bill transfers sites for future state-owned airports and facilities at the Dalton Highway's Franklin Bluffs and Happy Valley from DNR to DOT&PF.
- DOT&PF's need for these sites as maintenance stations and airstrips is increasing to support recent resource development activity in this corridor.

"L"
 A = 1'10'26"
 D = 0'15'00"
 T = 234.79'
 L = 469.57'
 R = 22,918.31'



SECTION 1

SECTION 1



DETAIL A
 NTS



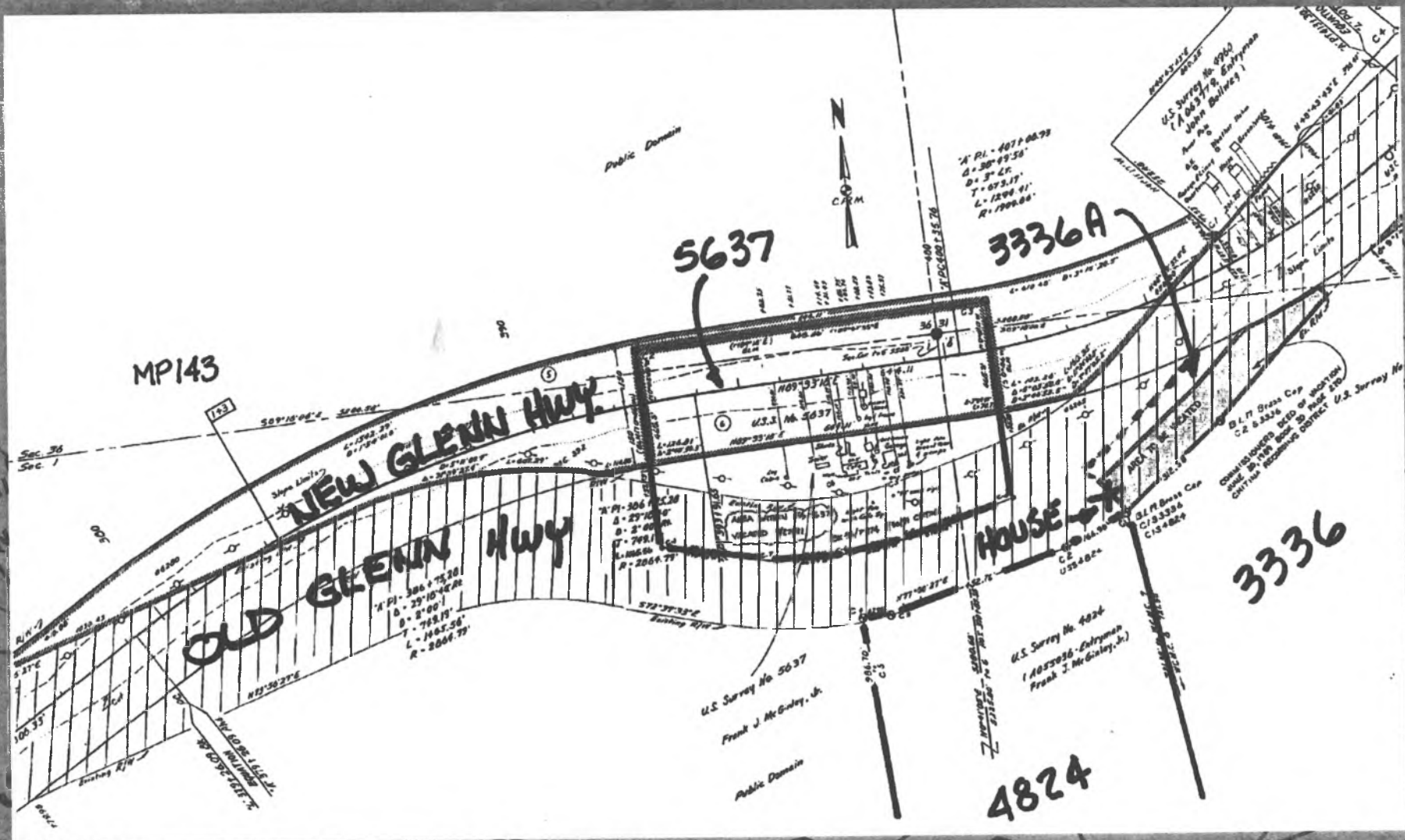
8/16/78	Initial project limit to design A.	N.D.
8/22	REVISION	BY
STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES RIGHT OF WAY MAP ALASKA PROJECT NO. IR-0A1-4(2) GLENN HIGHWAY 118-NORTH SHEET 1" = 100' SHEET 22 OF 35		

Sheet No. 22 - Drawing No. 4434
 8888 887' - 8872 888' DISTANCE
 8872 887' - 8872 888' DISTANCE
 8872 887' - 8872 888' DISTANCE

Plat 47-25
 Chitina Base Dist
 6/10/97

Plat 47-25
 Palmer Base Dist
 6/02/97

ROW Plans – Glenn Highway Realignment



February 22, 2013

-----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; rhmilius@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.

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Julie Smith
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Ester, Alaska 99725
907-479-8144
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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

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



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 MacKinnon', with a stylized flourish at the end.

John MacKinnon, Executive Director
Associated General Contractors of Alaska



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
Fax: 907.586.8365
dot.state.ak.us

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 Athabascan 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

Department of Transportation and Public Facilities

3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500
Main: 907.465.3900
Fax: 907.586.8365
dot.state.ak.us

March 13, 2014

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

Dear Senator Egan:

In response to questions pertaining to SB 211 posed by the Senate Transportation Standing Committee members on March 11, 2014, the following information is provided:

- **Where is the public process if the Department of Natural Resources (DNR) transfers land to the Department of Transportation and Public Facilities (DOT&PF)?**

The public process for incorporating public domain land in the construction or repair of the state's infrastructure begins with communities and municipalities expressing the need for new or upgraded facilities. Communities and municipalities advocate through the legislative process for state funding to pay for needed construction or maintenance. It is only after this lengthy public process, resulting in a project being included in a capital budget appropriation, DOT&PF begins its years long public processes that results in defined right-of-way property needed for inclusion in a project.

DOT&PF's project development processes result in significant public input and consideration on two different fronts: overall project design and permitting the proposed project through environmental and resource agencies (including the divisions of DNR). The many year processes for designing and permitting a public infrastructure project allow far greater opportunities for public input as compared to a private application for the use of public domain land. In a process that addresses the public's concerns and avoids or minimizes potential effects to the environment and natural resources, the "footprint" of a DOT&PF project is firmly established through the creation of state and federal permit conditions. It is only after DOT&PF has received all of its state and federal permit conditions that it seeks the necessary public domain land for construction. Attached is a project development summary highlighting public involvement processes.

Under current law, DNR must review DOT&PF's application for public domain land under its Alaska Land Act processes in the same manner as it would review any private entity seeking to develop state land. The Alaska Land Act review for the "disposal" of state land at the end of these multi-year processes is unnecessary and duplicative of the public and permitting agency review done in the development of the project. Because the public and agency processes to develop a project have already established a footprint providing the greatest benefit for the least impact, DNR has never denied a DOT&PF request for public domain land to be incorporated into an infrastructure project.

"Keep Alaska Moving through service and infrastructure."

- **Currently DNR considers the interest of adjacent landowners and is able to attach conditions to land that it transfers to DOT&PF. Does this legislation provide any consideration?**

This bill does not reduce any public processes or permit requirements that result in permit conditions on a DOT&PF project to protect neighboring properties and the public in general. In place of the Alaska Land Act review for a disposal of state land, the bill creates a new public process (Sections 3, 5, and 8) whereby DOT&PF presents to DNR and the public a written determination explaining its reasonable need for a specific portion of public domain land, with property plans identifying the exact parameters of the public domain land intended for transfer. The public and DNR may submit comments to DOT&PF on its determination of "reasonable necessity" and DOT&PF may alter its request upon those comments. In the end, however, the project footprint is determined by DOT&PF for the construction of the project, and the activities within that footprint are limited by permit conditions and local, state, and federal laws.

- **Is Section 16 unconstitutional?**

The concern expressed in public testimony was that Section 16 would require DNR to immediately issue easements to the U.S. Forest Service—without an opportunity for public comment—which would violate the requirements of Alaska's Constitution. Section 16 recognizes the exchange of easements between the federal and state governments, and authorizes the commissioner of DNR to waive the 55-year limitation upon a determination that a longer term is in the best interest of the state.

As was stated in public testimony, in 2006 the state and federal governments entered into a memorandum of understanding (attached) that provides a process for DNR's consideration of US Forest Service development plans for the identified properties, and that requires the issuance of site-specific easements. DNR only issues individual easements upon review of U.S. Forest Service development plans and easement diagrams (MOU Section E, at pages 3-5), and after issuing state best interest findings and providing public notice (MOU paragraph E.3, at page 5). Thus, Section 16 of the bill does not waive public notice requirements nor does it cause or contemplate a violation of the Alaska Constitution.

- **How would competing claims for land be handled (North Slope Borough selections)?**

Under AS 29.65.020, municipalities are entitled to receive a certain amount of general grant land that is "vacant, unappropriated, and unreserved." Because of this restriction, state transportation infrastructure is not normally available for municipal selection. We have attached the relevant portion of DNR's land classification decision for Happy Valley, which better explains DNR's analysis for the setting boundaries on lands available for municipal selection. We have also attached letters of support from former legislators and administrations requesting that DNR retain the Happy Valley transportation facilities under state ownership and control.

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

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
Division of Mining, Land and Water
July 1, 2002

02 JUN 25 AM 9:18
RECEIVED
JERRY E. HARRIS

(DRAFT)
SITE-SPECIFIC PLAN
FOR
LAND NORTH AND SOUTH OF HAPPY VALLEY
AND
COLDFOOT

PROPOSED ACTION

This site-specific plan proposes classification of approximately 105,750 acres of state lands along the Dalton Highway and Trans-Alaska Pipeline from Pipeline Milepost (PLMP) 56.5, which is located just north of Pump Station 2, southward to PLMP 117.2 which is located just south of Pump Station 3 at PLMP 104.3, and at Coldfoot from approximately PLMP 232.3 to PLMP 240.1. The land within both locations is unclassified state land. The North Slope Borough has selected portions of the project area as part of its municipal entitlement under AS 29.65. The purpose of this plan is to consider the criteria set out under AS 38.04.065(b) and 11 AAC 55 to determine the proper classification under AS 38.04.065.

For ease and consistency, where possible locations are identified using pipeline milepost distances with PLMP 0 beginning on the North Slope.

SITE FACTORS

Location: Refer to Site-Specific Planning Area Maps

Geographic: The majority of the planning area is in North Slope Coastal Plain and foothills on the north side of the Brooks Range along the Dalton Highway. The remaining smaller portion of the area is at Coldfoot located on the south side of the Brooks Range.

Borough: All lands except those in T28N, R12W FM and T29N, R12W, FM are located within the North Slope Borough. Those lands not in the North Slope Borough are located at Coldfoot and are outside an organized borough.

Native Region: Arctic Slope Regional Corporation and Doyon LTD.

Coastal District: North Slope Borough Coastal Management Zone- The inland boundary extends inland along the Sagavanirktok (including Accomplishment and Section Creeks), Ridbon, Lupine, Echooka, Ivishak, Saviukviayak (including Flood Creek), drainages. Along

to the North Slope Borough, therefore, these lands are designated and classified as **“Resource Management Land”**.

In determining the overall best interests of the state, consideration must also be given to the state’s obligation to fulfill the Borough’s entitlement under AS 29.65. Although this plan recognizes that the borough has selections filed on some lands, the plan does not constitute a decision under AS 29.65 to convey the lands to the borough. The plan considers the selections in determining the appropriate classification that would allow continued state management or conveyance to the borough should the decision be made by the state to convey the land. The classification Resource Management recognizes that the land is presently remote and for which a specific resource allocation decision is not possible because of a lack of adequate resource, economic, or other relevant information. This classification meets the criteria of “vacant, unappropriated, unreserved land” under AS 29.65 and would allow a conveyance should such a decision be made, or continued management by the state.

Happy Valley: T3S, R14E, UM Section 4, 5, 7-9, 16-20, 29-32. A portion of this area will be managed as a development node (Sections 19, 20, 29, 30) to provide facilities that support transportation and utility uses, including public services, tourist and traveler facilities, recreation and other related facilities. The state will retain in state ownership land underlying existing oil and gas transportation facilities such as the pipeline, and land needed for state managed public facilities. Land not needed for existing and future facilities may be conveyed to the North Slope Borough under AS 29.65. The determination of exactly what lands will be conveyed to the Borough will be made through the AS 29.65 and Best Interest Finding (AS 38.05.035(e)) for the Borough’s selection.

This plan recognizes: the possible use of the land at Happy Valley as a development node; the pending selection, ADL 414838, of land by the North Slope Borough; the Department of Transportation and Public Facilities pending application ADL 415414, which overlaps a portion of Borough selection ADL 414838; and, the need to resolve any remaining issues concerning the Happy Valley contaminated site and the resource values associated with the area.

The management intent for these lands is to recognize the existing uses while allowing only short term new activities until the adjudication of the pending applications from the North Slope Borough and the Department of Transportation and Public Facilities, yet maintaining the state’s ability to use the land for transportation, pipeline and utility corridor purposes. These land are designated and classified as **“Resource Management Land”**.

In determining the overall best interests of the state, consideration must also be given to the state’s obligation to fulfill the Borough’s entitlement under AS 29.65. Although this plan recognizes that the borough has selections filed on some lands, the plan does not constitute a decision under AS 29.65 to convey the lands to the borough. The plan considers the selections in determining the appropriate classification that would allow continued state management or conveyance to the borough should the decision be made by the state to convey the land. The classification resource management is retained for land that is presently remote and for which a specific resource allocation decision is not possible because of a lack of adequate resource, economic, or other relevant information. This classification meets the criteria of “vacant,

unappropriated, unreserved land” under AS 29.65 and would allow a conveyance should such a decision be made, or continued management by the state.

Coldfoot: T28N, R12W UM Section 3, 4, 9, 10, 15, 16, 20, 21, 22 and T29N, R12E UM Section 23, 24, 25, 26, 27, 34, 35. The management intend for land within the Coldfoot development node is to provide for continued operation of existing services and additional or expanded services in support of the use of the Dalton Highway by industrial and commercial traffic as well as use by the public. This site-specific plan also recognizes the past, present, and future importance of this land as a transportation and utility corridor for authorized pipeline purposes and for future use because of its location and accessibility. The land at Coldfoot, because of its existing use, physical qualities and suitability for year around commercial development is designated and classified as “**Settlement Land**”.

Remainder of Corridor: The remaining corridor land will be managed for transportation and utility uses and will be retained in state ownership. This site-specific plan recognizes the past, present, and future importance of this land as a transportation and utility corridor for authorized pipeline purposes and for future use because of its location and accessibility. At the same time it is important that other resource values are recognized in the use and development of this land. This is particularly important with the increasing use of the area by the public. The management intent for the land adjacent to the Dalton Highway right-of-way, with the exceptions of the lands at Pump Station 2, Coldfoot and Happy Valley, and the land selected by the Borough, is to provide for existing transportation of oil and gas and to recognize the potential for location and construction of future access, pipelines or utilities while minimizing adverse effects to the environmental and access for other resource use.

Support services that can be located at nodes will not be allowed in this unit. This land is designated and classified as “**Transportation Corridor Land**”.



Greater Fairbanks Chamber of Commerce

Fairbanks, Alaska 99701

November 14, 1996

The Honorable Tony Knowles
Governor of the State of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

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u
u ROW
u

Routing slip table with columns for departments: M&O DIRECTOR, M&O DIRECTOR, PLANNING/ADM., SAFETY OFFICER, F.I.A. MANAGER, RETURN to File, FILE. Includes a checkmark in the first row and a signature in the PLANNING/ADM. row.

Dear Governor Knowles:

The Greater Fairbanks Chamber of Commerce submits the following comments on behalf of its 650 members and their 10,000 employees concerning the proposed transfer to the North Slope Borough of the lands in the Happy Valley area adjacent to the Dalton Highway. In general, the chamber continues to oppose this action as not in the best interests of the state or its citizens. The chamber is on record of having opposed the action and supports suspension of all of the lands which are needed to operate a viable northern Alaska airport in state ownership. The North Slope Borough (NSB) is encouraged to receive and productively use the adjacent selected lands to enhance this important transportation node.

- 1) Although your findings acknowledge the importance of the Happy Valley as a publicly owned airstrip, the proposed alternative virtually eliminates the possibility of operating a viable, safe airport at the site by the transfer of so much land to the NSB. Various federal regulations and requirements will preclude the possibility of gaining federal participation in the further development of Happy Valley as a northern airfield, and the fifty foot wide access will make it impossible to construct or maintain reasonable surface access from the Dalton Highway. All lands immediately adjacent to the actual runway itself are proposed to be conveyed, thus eliminating the possibility of ADOT & PF generating any revenues at the airport to offset the future costs of operation and maintenance. The transfer and loss of these "apron" lands also appears to implicitly assure the allowance of airport boundary crossings from properties adjacent to the runway. This contradicts 17AAC40.040, and long-standing ADOT & PF and F.A.A policies which minimize or forbid such access. Under the proposed alternative, ADOT & PF assumes all the liability of ownership, maintenance and safety for the airfield, but without provisions made for the location of maintenance facilities and no likelihood of applying federal design and construction funds to create a modern, useable and safe airport.

Checklist table with items: CHIEF RW AGENT, PRE AUDIT, ENGINEERING, APPRAISALS, NEGOTIATIONS, Retention/Prop. Mgmt., UTILITIES, RETURN TO:, FILE. Includes handwritten initials and checkmarks.

The Honorable Tony Knowles

Page 2

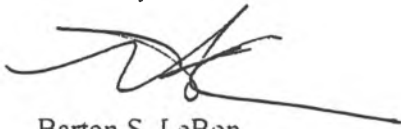
November 14, 1996

- 2) Prior to the conveyance of the Happy Valley Development Node from the federal government to the state in 1993, many public meetings were held throughout the state during four or more iterations of land use plans. During the twenty plus years taken to develop these plans, it was the consensus of the majority that lands should remain as a development node and in public ownership. The lands were conveyed to the state with the intent that the lands would remain in public ownership for the benefit of the entire span of northern Alaska. This proposed action clearly circumvents the public process and is counter to the expressed desires of the public.
- 3) The proposed action is a significant move on the part of the state and deserves full public exposure and discussion in public meetings and by public review of draft plans. The process to date appears to be a hurried attempt to accomplish political goals and not a land transfer based on reasoned, well thought out land title decisions which serve all of the citizens of this state. The decision should be delayed for a minimum of 120 days to enable public meetings to be held on the proposed alternative land transfer.
- 4) The North Slope Borough's record of opposing the opening of the Dalton Highway and their opposition to the use of state lands within the Borough's boundaries for legitimate activities is indication that the NSB will continue to obstruct the use of these state-owned public lands as an "open" airport and staging area. Given this history of non-cooperation, it is clearly not in the state's best interest to convey lands that are a vital link for the public's practical, cost-effective access to the remaining state lands within the NSB.
- 5) Due to the increasing flow of traffic on the Dalton Highway, and general exploration activities across the North Slope, the importance and frequency of use of Happy Valley as a transportation node is expected to increase over time. Reserving an adequate block of lands to facilitate ADOT & PF's management and funding of an airport should assure long-term economic development and success for various area-wide business and recreational activities. Adjacent NSB lands will be well positioned to earn revenues from this surface air nodal synergy, especially for those services which are not easily accommodated on airport lease lots. The municipal land's income will pale in comparison with the NSB's overall budget, but be of distinct interest to those individuals and citizens who will manage the businesses created.
- 6) The administration's stated goal is to increase jobs in Alaska and to improve Alaska's economic base. Supporting an action that would potentially restrict jobs and economic development is counter to the administration's policy and promises made to the electorate of this state.

The Honorable Tony Knowles
Page 3
November 14, 1996

Thank you for the opportunity to comment on this issue of vital importance to all of the residents of the Interior. I am confident that your administration will allow for more public debate on the issue and ultimately make a decision that will be to the benefit of all Alaskans.

Sincerely,



Barton S. LeBon
Chairman of the Board

cc:

Rod Dowling, ADNR
Commissioner Shively
Commissioner Perkins
Interior Legislators
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Fairbanks Daily News-Miner
as Letter to the Editor
City of Fairbanks
Fairbanks North Star Borough
North Slope Borough
Alaska State Chamber of Commerce
Fairbanks Convention and Visitors Bureau



Alaska State Legislature

Official Business

DEFERRED P/W

OCT 04 1996

P.O. Box V
State Capitol
Juneau, Alaska 99811

October 3, 1996

Mr. Rod Dowling
DNR - Division of Land
3601 "C" Street, Suite 1130
Anchorage, AK 99503-5947

To: Norm

From: Sam
788-0857

(REP. KENNEDY)

Dear Mr. Dowling:

We are writing to express our concerns regarding the Preliminary Finding and Decision regarding the transfer of state land at Happy Valley to the North Slope Borough (NSB).

The proposal to reduce the Interagency Land Management Assignment (ILMA) to the Department of Transportation and Public Facilities (DOT&PF) included in the decision is an unworkable situation that does not serve the best interest of the state. Alternative 1, rejecting the entire borough selection, is clearly in the best interest of the state. This would allow DNR to grant the full ILMA to DOT&PF while keeping control over an area strategically located near the Dalton highway. Since the Dalton highway coordination group, appointed by Governor Tony Knowles in 1995, has not completed a master plan for the Dalton highway, we urge DNR to reject the borough's request.

The Happy Valley airport is strategically located between the Brooks Range mountain weather and the coastal ice fog, and it provides an integral connection between the Dalton Highway and the North Slope communities. The preliminary decision has the effect of denying DOT the ability to expand the airstrip or to lease any surrounding land. Essentially, after a plane lands on the airstrip, it could not taxi off the runway while remaining on state land. Anyone landing an airplane would be required to have a lease with the North Slope borough in order to store his plane or any equipment near the airstrip. According to Page 8 of the decision:

"The State's interest in retaining ownership of the land covered by the ILMA outweighs the municipality's interest because the airstrip will serve as a state owned airstrip to support public access to nearby State and Federal land and to support oil and gas development."

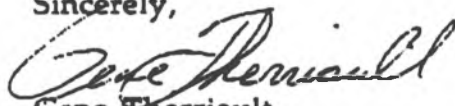
Mr. Rod Dowling
October 3, 1996
Page 2

It is evident from this statement that DNR recognizes the need to protect the state's interest, however in order for the state's interest to be truly preserved DNR must grant the full ILMA to DOT&PF for management of an *airport*, not just an airstrip. It is my understanding that there is not a comparable situation in the state where DOT&PF has control of an airstrip without control of any surrounding land. If the recommendation of alternative 4 becomes the final decision, it would force DOT&PF to lease land from the NSB in order to operate an airport.

The North Slope Borough has never supported the opening of the Dalton Highway. The public record has shown the borough to be uncooperative and unsupportive of current and potential future uses in this area and we believe they will try to limit or close public access to this area if they have control of the airstrip's surrounding land. The borough has denied approval of state permitted uses in the area by limiting uses on state land under the borough's purported zoning jurisdiction.

Again, we urge DNR to amend this decision to fully protect the State of Alaska's property interests. The state's interest needs to be protected by looking at current and potential future uses in this area. Thank you for addressing our concerns.

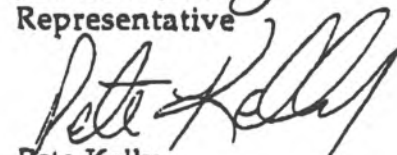
Sincerely,


Gene Therriault
Representative


Mike Miller
Senator


Jeannette James
Representative


Al Vezey
Representative


Pete Kelly
Representative

cc: Commissioner Shively, DNR
Commissioner Perkins, DOT&PF
Governor Tony Knowles

CO-CHAIR
HOUSE, HEALTH, EDUCATION
& SOCIAL SERVICES COMMITTEE

VICE-CHAIR
HOUSE RULES COMMITTEE

MEMBER
HOUSE JUDICIARY COMMITTEE
LEGISLATIVE BUDGET & AUDIT COMMITTEE

Alaska State Legislature



REPRESENTATIVE CON BUNDE

District 18

DURING SESSION:
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JUNEAU, ALASKA 99801-1182
1 (907) 465-4843
1 (800) 892-4843

DURING INTERIM:
716 WEST 4th AVENUE
ANCHORAGE, ALASKA 99501-2133
1 (907) 258-8168
E-MAIL ADDRESS:
Representative Con Bunde@LEGIS.state.ak.us

RECEIVED R/W
DEC 09 1996

November 15, 1996

Mr. Rod Dowling
Division of Land
Alaska Department of Natural Resources
3601 C St., Suite 1130
Anchorage, AK 99503-5947

Dear Mr. Dowling:

REGISTER	
INDEX	
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RECEIVED	COPY	NORTHERN REGION DUTY	INITIAL
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		D&C DIRECTOR	
✓		M&O DIRECTOR	
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		SAFETY OFFICER	
		F.I.A. MANAGER	
		RETURN to Reg. Dir. Sec.	
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We are writing to voice our objection to the Alaska Department of Natural Resources' preliminary finding and decision regarding the Interagency Land Management Assignment (ADL 415414) for the Happy Valley area.

Alternative No. 4, the recommended alternative, would transfer to the North Slope Borough 2,366 acres of land surrounding a vital North Slope transportation and staging area, leaving in state hands only the tiny island of the Happy Valley airstrip. If the North Slope Borough were to exercise its right under this alternative to deny the use of surrounding lands for airstrip maintenance, support operations and related activities, the airstrip would not be able to support the important activities described in the preliminary finding's Agency Review (section I.).

These uses include support of field work, search-and-rescue operations, medevacs, hunting enforcement, scientific research, and other purposes by numerous state agencies, including the departments of Fish and Game, Transportation and Public Facilities, and Public Safety, as well as the University of Alaska and numerous other state universities. The state as a whole has vital interests in having a safe, well-maintained and fully-accessible airport at Happy Valley to support natural resource exploration and development efforts on the North Slope.

Further, with the recent opening of the Dalton Highway to public access, there is likely to be an increased demand for visitor services in the Happy Valley area. It would be appropriate for the state Department of Transportation to have the opportunity to lease land near the highway to private businesses, which could provide these services to the public while returning revenue to the state.

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF FISH & WILDLIFE PROTECTION

TONY KNOWLES, GOVERNOR

RONALD L. OTTE
COMMISSIONER

5700 E. TUDOR ROAD
ANCHORAGE, ALASKA 99507
PHONE (907) 269-5509

January 28, 1997

RECEIVED R/W

JAN 31 1997

Mr. Tony Johansen
Regional Supervisor - Northern Region DOT/PF
2301 Peger Road
Fairbanks, AK 99709

Dear Mr. Johansen:

The State of Alaska, Department of Public Safety, Division of Fish and Wildlife Protection, currently has a land use permit with the Department of Natural Resources for a cabin site along side the runway at Happy Valley. This information is recorded as permit #LAS20372 for the use of land described as: Umiate Meridian, Township 3 South, Range 14 East, Section 30.

This land use permit was recently renewed on July 1, 1996, for a period of five years, expiring June 30, 2001.

It is the request of the Department of Public Safety that the site covered by this land use permit be retained in State ownership along with the adjacent Happy Valley runway and helipad. This site is used for conducting hunting and guiding enforcement operations and for staging search and rescue operations and medical evacuations. The runway and helipad are necessary to conduct the above listed activities.

The Division of Fish and Wildlife Protection currently owns the improvements on the land covered by this land use permit. Our ability to protect the natural resources in this area will be impacted if we loose possession of our lease site at Happy Valley. Colonel Glass, our Division Director, is very concerned about this and requested that I relay our request to you. Any assistance you can give us is appreciated. Let me know if you need further information.

CHIEF R/W AGENT	
PRE AUDIT	
ENGINEERING	
APPRAISALS	
NEGOTIATIONS	
Relocation/Prop. Mgmt.	
UTILITIES	
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Sincerely,

Al Cain

Lieutenant Al Cain
Acting Operation Commander
Division of Fish & Wildlife Protection

cc: Colonel John Glass
Lieutenant Dave Lorring

ROUTE	COPY	NORTHERN REGION DOT/PF
		REGIONAL DIRECTOR
		D&C DIRECTOR
		M&O DIRECTOR
		PLANNING/ADM. CHIEF
		SAFETY OFFICER
		F.I.A. MANAGER
		RETURN to Reg. Dir. Sec.



University of Alaska
Educational Property & Facilities
Burrovich Building • Suite 211 • 910 Yukon Drive
P. O. Box 755030 • Fairbanks • Alaska • 99775-5030
(907) 474-7692 • FAX: (907) 474-5634

December 6, 1994

Rose Greenblatt
Dept. of Transportation & Public Facilities
2301 Peger Road
Fairbanks, AK 99709-5316

Re: Happy Valley Camp

Dear Ms. Greenblatt:


This letter is in response to your request regarding University use of the air landing strip and helicopter pad in the area known as Happy Valley Camp. The camp is used to stage scientific research by the University of Alaska Polar Ice Coring Office (PICO) and the Institute of Arctic Biology (IAB). In addition, these offices and other University schools and programs coordinate use of the camp for the Universities of California, Colorado, Illinois, State University of New York, Woods Hole (MA), and the National Science Foundation through its Arctic Region Consortium Scientific Studies (ARCSS) Office of Polar Programs, Arctic System Science Program.

All of these entities conduct extensive studies in the Northern Region of climactic conditions and their effects on global change, atmospheric studies regarding the aurora, air pollution, ground studies in water research, permafrost, impact studies on wildlife, plant life, and a wide variety of ecosystems which are only beginning to be understood. Access to study sites ranging from a few square feet to dozens of square miles of tundra is a vital consideration in all of these projects. Travel must be accomplished in such a way as to leave the least impact on the environment as possible. The use of aircraft becomes the obvious choice in many instances, especially helicopter.

Accordingly, the University of Alaska urges the Alaska Department of Transportation & Public Facilities to designate the public lands used at the Happy Valley Camp as public purpose lands and that those designated public purpose lands can be used by the University to stage scientific research, including maintaining a field office and ingress and egress for ground and air transportation.

If you have any further questions please call me. Thank. you.

Sincerely,


Pete Rutledge
Director

1871

TOTAL P.01

MEMORANDUM

STATE OF ALASKA

DEC 01 1994

Northern Region DOT & FF

To: Rose Greenblatt
 DOTPF, Right of Way Section
 Fairbanks

Date: November 18, 1994

File #:

Phone #: 451-5350

From: Lieutenant Dave Lorring *DL*
 Commander, D Detachment
 Fish & Wildlife Protection

Subject: Happy Valley Helicopter Pad

I spoke with the Alaska State Troopers helicopter pilot in regards to the use of the helicopter pad at Happy Valley.

Our Department needs for the helicopter pad are several fold.

- First: To base helicopter operations for search and rescue.
- Second: To base helicopter operations to conduct medical evacuations.
- Third: To conduct hunting and guiding enforcement operations.

It would be our request for the State to maintain ownership of the property and continue it's use as a location for helicopter operations.

DL/vm

cc: Major Russell
 Captain Myers, AST
 Tom Davis, Pilot

CHIEF RAW AGENT	<i>DL</i>
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APPRAISALS	
✓ NEGOTIATIONS	<i>DL</i>
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WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF STATE TROOPERS

Richard L. Burton
Commissioner

1979 PEGER ROAD
FAIRBANKS, ALASKA 99709

November 15, 1994

NOV 17 1994
Northern Region OCT 6 1994

Rose Greenblatt
State of Alaska
Department of Transportation
2301 Peger Road
Fairbanks, AK 99709

Dear Ms. Greenblatt;

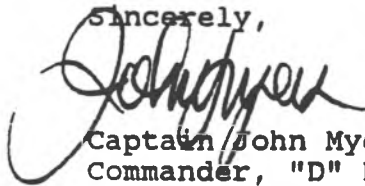
I understand that the North Slope Borough has expressed an interest in closing the runway and helipad at the Happy Valley Camp on the Dalton Highway.

The Department of Public Safety has a strong statutory commitment to search and rescue efforts throughout the State. I believe it could be a detriment to the fulfillment of that mandate to close the helipad and runway in an area that is relatively inaccessible by other means of rescue transportation.

In addition as the Haul Road opens to public traffic, the Department of Public Safety will be patrolling the highway and very possibly relying on support facilities such as the helipad and runway at Happy Valley.

Once again, the Department of Public Safety would be adamantly opposed to closing those facilities.

Sincerely,



Captain John Myers
Commander, "D" Detachment
Alaska State Troopers

CHIEF BUREAU	
DEPUTY CHIEF	
ADJUTANT GENERAL	
CLERK	
TRAINING	
INSPECTION	
INVESTIGATION	
LABORATORY	
LEGAL COUNSEL	
RECORDS & COMM.	
SALES & MARKETING	
TRAINING CENTER	
HEADQUARTERS	
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STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

1300 COLLEGE ROAD
FAIRBANKS, ALASKA 99701-1599

13 December 1994

DEC 20 1994

Northern Region DOT & FF

Rose Greenblat
Right of Way Agent
Department of Transportation
2310 Peger Rd
Fairbanks, AK 99709

Dear Ms Greenblat,

I am writing to express concern about the potential loss of access to and use of the airstrip and helipad at Happy Valley on the Dalton Highway. We have used these facilities for several years as a base of operations for assessment of anadromous Arctic char stocks in rivers of the Sagavanirktok drainage. We have plans for expansion of the char assessment project in the upcoming field season. Loss of the use of the Happy Valley facility would dramatically increase the cost of operation and the logistic difficulty of conducting the stock assessment. We request that you do what you can to ensure the continued availability of this site for our field operation.

Sincerely,

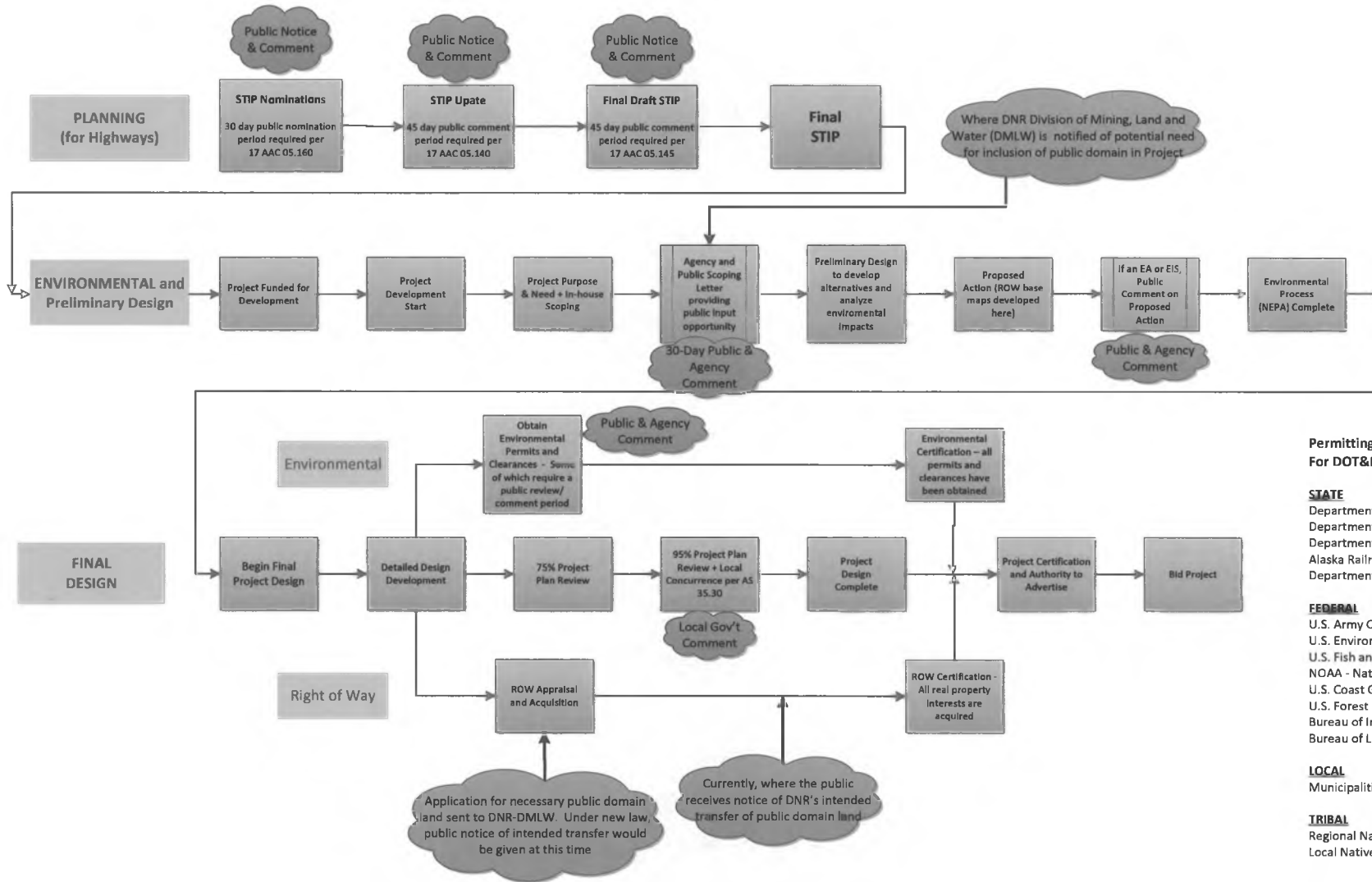


John M. Burr
Fisheries Biologist
Sport Fish Division
(907) 459-7220

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	Relocation/Prop. Mgmt.	
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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

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

9/22/06
Date

By Michael L. Menge
Michael L. Menge
Commissioner
Department of Natural Resources

9/29/06
Date

UNITED STATES OF AMERICA

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

9/22/2006
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

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,



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907-748-7471

cc: Sean Lynch, Department of Law
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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



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

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March 18, 2014

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

Dear Representative Wilson:

In response to the March 11, 2014 reading of House Bill 371 by the Senate Transportation Standing Committee members, questions and concerns were presented by past and present Department of Natural Resources (DNR) employees. The following answers are in response to these public comments:

- **What actual land is included in HB 371? 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?**

Sections 1, 6, and 9 of the bill recognizes the Department of Transportation and Public Facilities (DOT&PF)'s primary authority over state-owned transportation and public facility properties. We are unaware of any comprehensive list of DOT&PF properties, or any summary of acreage, but the footprint of each DOT&PF facility will neither increase nor decrease upon passage of the bill. The bill calls for the transfer of two maintenance stations and airstrips on the Dalton Highway from DNR to DOT&PF, and those facilities encompass approximately 860 acres combined.

- **What parcels of land included in HB 371 are not currently surveyed? What is DOT&PF's plan for surveying these parcels? What is the expected cost for these surveys?**

There are a number of state-owned transportation and public facility properties that are currently not surveyed. Generally speaking, the more remote a DOT&PF property the more likely the property has not been surveyed. DOT&PF properties are surveyed in conjunction with constructed improvements, so the inventory of surveyed properties grows each year. This bill does not require surveys of currently non-surveyed DOT&PF properties, so there are no expected costs for surveying. Surveys are completed through appropriations for specific projects, so surveys are updated in conjunction with capital improvements.

- **HB 371 requires completion of surveys after title has been conveyed to DOT&PF. 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?**

The State of Alaska is the owner of DNR managed lands and the owner of DOT&PF managed lands, so there will be no issues of questionable land ownership or clouded title during the post-construction period when DOT&PF is accounting for and closing out an infrastructure project. Survey and platting after construction of state-owned transportation or public facilities is currently standard procedure for DNR and DOT&PF, and will continue to be the standard procedure after passage of the bill.

"Keep Alaska Moving through service and infrastructure."

- **The last paragraph of Section 5 of HB 371 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&PF be required to follow to obtain surveys for its many unsurveyed material sites?**

The quoted provision requires DOT&PF to prepare a recorded survey within two years of opening any new materials site. In accordance with the newly established law, DOT&PF will record a survey of the newly opened site within two years of opening of a materials site. It is very important for DOT&PF and its contractors to be aware of the material site boundaries to ensure the state does not trespass onto private lands. DOT&PF's standard practice is to perform preliminary surveys, with flagging, if there is any reason to believe a trespass upon private property may occur.

Regarding state-owned material sites without a current survey, the vast majority of existing material sites used for DOT&PF facilities are the state-owned material sites from which DNR issues third-party material sales contracts. DOT&PF surveys these sites with project funds, and maintains environmental permit compliance when the sites are in use. Those non-surveyed sites will remain without a survey until a DOT&PF capital project intends to use the site, DNR considers a third-party material sales contract, or some other condition requires the site to be surveyed.

- **How will HB 371 impact funding for DNR and DOT&PF? Would DNR lose funding from loss of material sale revenue as a result of this bill? Would DOT&PF gain a new funding source from selling material from material sites? Section 13 of the bill states DNR would no longer charge DOT&PF for material. Does "DOT&PF" include DOT&PF contractors? Would DOT&PF start charging their contractors or others for material from state material sites? If so, where would those funds go?**

Our understanding is that revenue generated by DNR for the sales of materials goes into the state general fund. The bill does not eliminate DNR's authority to generate revenue from the sale of material to third parties. We also understand that DNR sells materials to DOT&PF contractors at a reduced rate of \$.50 per cubic yard, which is meant to cover DNR's administrative costs to administer the material sales contracts. We expect Section 13 would result in a net savings to the state general fund, as DOT&PF and DNR will no longer have to administratively manage DOT&PF contracts.

DOT&PF has no authority to sell materials to third parties, and will gain no such authority under this proposed bill, so DOT&PF gains no revenue from material sales. Section 13 would allow DOT&PF contractors to extract and use materials from DNR designated sites, without payment to DNR, when the materials are used for the construction or maintenance of a DOT&PF transportation or public facility project. This bill is expected to reduce the cost of state construction contracts due to the fact that DOT&PF will not have to pay its contractors to purchase state owned material from DNR.

- **HB 371 indicates DOT&PF will provide public notice under AS 44.62.175 when it requests title of state land from DNR. How does the public notice DOT&PF would provide differ from the public notice DNR is required to provide for a conveyance under AS 38.05.945?**

Prior to receiving public domain land for incorporation into a state infrastructure project, DOT&PF must provide public notice of its determination that the requested public domain land is "reasonably necessary" for the infrastructure, with diagrams of the properties to be incorporated. DOT&PF's current exemption from the Alaska Land Act procedures for the management of its government use properties, would be extended by Section 11 of the bill to include an exemption for transfers of the reasonably necessary public domain lands for DOT&PF projects. Therefore, DOT&PF's public notice of its determination of reasonable necessity would be in place of the public notice that may have been provided by DNR under its land disposal procedures for the intended transfer of state land to DOT&PF.

- **DNR manages for multiple uses of state land. Will DOT&PF manage state public domain land for multiple uses? If so, what legal authority and processes does DOT&PF have in place for multiple use**

management? How will DOT&PF's management of state public domain land be different from DNR management?

DOT&PF manages its lands in accordance with the legislative purposes of each of DOT&PF's statutory authorities: Title 02 (airports); Title 19 (highways); and Title 35 (public facilities). DOT&PF's legislative authorities require that the transportation and public facility properties be managed for their intended government purpose use; thus, DOT&PF properties are not managed to leave open the availability of potential multiple uses in the same way DNR manages the state public domain.

The Alaska Constitution recognizes that state land used for government purposes is not included in the state public domain, and that the inventory of government purpose lands can change and grow over time:

Article VIII, Section 6. 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.

The drafters of our Constitution recognized that government infrastructure develops over time to serve the people of the state, and wisely excluded state lands *intended* for governmental purposes from the definition of the state public domain. We believe the proposed amendments are in line with the Constitution's definition of the state public domain.

- **Testimony from DOT&PF indicated HB 371 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&PF's request for title to land? What level of public notice and involvement is provided under the federal version of the law?**

The federal authority that provides ready access to federal properties necessary for highway rights-of-way is found at 23 USC 317. Appropriation of federal properties for DOT&PF projects is done within the context of the environmental review and permitting of a project. State and federal law require DOT&PF to involve the public and state and federal agencies in the development and permitting of its construction projects—and the bill has no effect on those existing processes and regulatory requirements. Therefore, the involvement of the public and state and federal agencies will be exactly the same for DOT&PF's appropriation of federal land and the transfer of state public domain land to DOT&PF for incorporation into a state transportation or public facility.

- **DOT&PF circumvented DNR by submitting a bill through the Governor's Office that would do exactly what they could not do by working with the state agencies to find a solution.**

DOT&PF management worked on this bill with DNR management, and the Department of Law sections that advise both agencies, to find a workable solution to the problems caused by the overlapping jurisdiction found in state law. It was through this process that the agencies determined that a clarification in state law is necessary. The bill recognizes DOT&PF's primary authority to manage and control the rights-of-way for the state's transportation and public facility infrastructure. Without the proposed amendments to existing law, DOT&PF's dedicated government purpose properties will retain an overlay of DNR multiple-use management as DOT&PF's properties are and will remain a subset of "state land."

- **HB 371 gives DOT&PF unlimited and unrestricted use of state land for DOT&PF's purposes and DNR shall transfer to DOT&PF "whatever" DOT&PF wants and desires. DOT&PF will have authority to enter onto any state land including legislatively designated areas.**

Sections 3, 5, and 8 of the bill are quite limiting so that DOT&PF may only receive a portion of public domain land upon a written determination that specifically identified properties are "reasonably necessary" for a state transportation or public facility project. The required documentation of the need for inclusion of a portion of public domain land into a state infrastructure project is a far narrower standard than "whatever DOT&PF wants." Additionally, "public domain land" is the subset of "state land" that remains open and available for any number of

multiple uses. "Public domain land" does not include dedicated government purpose properties such as state forests, state parks, critical habitat areas, state wildlife preserves, or any other legislatively designated areas. "Public domain land" also does not include University of Alaska land, Alaska Railroad Corporation land, school trust land, and all other dedicated income producing state land. Therefore, the bill quite specifically limits DOT&PF's access to any state land outside of the state's multiple-use public domain.

- **In order for DOT&PF to divest state property, statutes paralleling DNR's statutes should be set up. But then why create a new process for DOT&PF when DNR has existing authority to dispose property?**

Since statehood, DOT&PF has been empowered to hold, manage, and dispose its properties. DOT&PF's statutory disposal authorities and implementing regulations are specifically geared toward the disposal of no longer necessary infrastructure property and remnants by authorizing adjoining property preferences and authorizing disposals of less than marketable sized properties. DNR's public domain disposal authorities have proved a poor fit for disposal of former infrastructure properties and remnants; DOT&PF can complete the disposal of its excess properties in six to ten months from completion of construction, whereas DNR disposals of similar properties takes years to decades to complete. These substantial and unnecessary delays result in profound inconveniences and monetary consequences to the unfortunate private property owners adjoining the former public domain land who currently must receive the disposal through DNR. These delays in project closeout also place DOT&PF in a position of non-compliance with the requirements of its federal funding agencies.

- **DOT&PF will definitely require additional personnel to properly manage all aspects of HB 371. The survey requirements alone are staggering.**

Aside from the transfer of the Happy Valley and Franklin Bluffs maintenance stations and airstrips, DOT&PF's inventory of transportation and public facilities remain the same before and after passage of the bill. DOT&PF currently has metes and bounds descriptions of the properties, and surveys for these two sites will be completed as these properties are improved. Thus, there are no survey requirements to implement the bill. Likewise, DOT&PF is currently empowered to hold, manage, and maintain all properties within its inventory—and will continue to fulfill its statutory responsibilities with its current staff. The bill's clarification that DOT&PF has primary authority over its properties will not change the workload or personnel needs of DOT&PF to manage these properties.

- **Section 13 of HB 371 allows DOT&PF 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 extends DOT&PF's current exemptions from the Alaska Land Act (AS 38.05.030) to include a DOT&PF exemption to DNR's materials sales contract requirements (AS 38.05.550-.565). The exemption in Section 13 would only apply to activities in those gravel pits where DNR is authorized to sell materials to third parties—most of these sites are currently maintained and environmentally permitted by DOT&PF. Sites that were developed by another party for that party's exclusive use are not affected by Section 13, as DNR cannot issue third-party materials sales contracts for exclusive use sites.

DNR and DOT&PF must coordinate with each other every spring with regard to the proposed uses of resources in the construction season (recall, DOT&PF carries the environmental permits and responsibilities on most of the pits from which DNR sells materials). These coordinating activities will continue under the new law. DNR has always fulfilled its third-party materials sales contracts with DOT&PF simultaneously carrying out its seasonal construction and maintenance activities, and DOT&PF anticipates the same extraction rates will continue under the new law.

- **HB 371 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).**

Transfers of public domain land under the bill are "subject to valid existing rights," therefore all vested rights and interests are addressed by the bill. Competing claims and other potential uses for public domain lands are thoroughly considered and weighed by the public and permitting agencies during DOT&PF's project development and permitting processes. A DOT&PF project footprint is finalized and permitted only after avoiding and

mitigating impacts to neighboring properties, resources, and other competing interests. The public outreach and user group input in the DNR- Division of Mining Land and Water (DMLW) process for the disposal of state land pales in comparison to the DOT&PF public processes for developing and permitting state infrastructure projects. All competing claims to the land and potential competing uses for the land are heard and vetted during the public and inter-agency processing of the multiple permits and authorizations for a state construction project.

DNR retains its full authority under the bill for third-party sales of material resources. Therefore, there should be no effect to public or private access other DNR's materials sites.

- **HB 371 provides no mechanism to address public concerns with the proposed use, access issues, and conflicts with adjacent land owners and users.**

It is true that DOT&PF will no longer be required to undergo the DNR multiple-use analysis under the Alaska Land Act and its regulations for the "disposal" of state land. However, this does not mean there is no mechanism to hear local concerns. AS 35.30 requires DOT&PF to obtain review and approval of its projects by local planning authorities, including comment from village and community councils, and compliance with all municipal ordinances. This requirement is imposed on DOT&PF construction projects so that project plans and environmental permits may be negotiated and modified to address community concerns. This is just one of the reasons why DNR's Alaska Land Act analysis—following DOT&PF's receipt of all federal, state, and local permits and authorizations—is duplicative when applied to DOT&PF projects. If DNR was to modify a project footprint during its Alaska Land Act processes (there is no institutional memory of this ever happening), DOT&PF would likely have to go back and re-analyze, re-notice, and re-apply for its project permits and authorizations.

- **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.**

Under the 2006 agreement between DNR and the U.S. Forest Service (USFS), DNR will only convey an identified reciprocal easement upon the issuance of state's best interest finding and public notice. In order for DNR to even consider a USFS request for the issuance of a reciprocal easement, the USFS must present DNR with a development plan and diagrams of the proposed easement diagrams. The bill would do nothing to alter the requirements under the 2006 agreement. Section 16 is intended to allow the commissioner of DNR to exercise discretion—when in the best interest of the state—to waive any 55 year limitation on any conveyed reciprocal easement.

To clarify that the bill is not directing DNR to take any direct action with regard the reciprocal easements, DOT&PF and DNR have proposed the following language be included in committee substitutes to the companion bills:

The easements identified on the map numbered 92337 and dated June 15, 2005, and that are part of the reciprocal exchange of easements or rights-of-way and easements enacted into federal law under 119 Stat. 1177, may have a term of years for a period of more than 55 years if the commissioner of natural resources determines the length of the term to be in the best interest of the state.

- **The Zero fiscal notes are unrealistic as HB 371 will significantly add to DNR and DOT&PF's workloads and costs.**

The bill does not anticipate any additional work or costs for either agency. DOT&PF currently has full authority to hold title to and manage its transportation and public facility properties. The bill's Sections 1, 6, and 9 clarify that DOT&PF has primary authority over the surface estate of these properties, and DNR retains regulatory authority over these properties (as a subset of state lands) subject to DOT&PF terms and conditions. DOT&PF, DNR, and the public are fully aware of the location of the state's transportation and public facilities, and most of these facilities have recorded surveys (those that don't have recorded surveys now, will not have recorded surveys

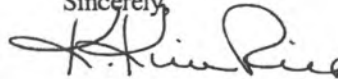
after passage). Thus, DOT&PF and DNR do not anticipate any survey work, title transfer, or any other additional work to implement to the provisions of this bill.

- **To date many parties directly and potentially impacted by HB 371, 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.**

As stated above, this bill does not affect third-party operators that hold exclusive lease rights to state land. With respect to third-party users of DNR's publicly accessible materials sites, the bill only exempts DOT&PF from DNR's material sales contracting requirements—the bill does not limit DNR's authority to issue third-party material sales contracts.

I hope these answers help clarify House Bill 371. 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

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

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GRANITE

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