

SB

211

<TARGET><BILL>SB 211</BILL><SUBJECT>SB
211</SUBJECT><COMM>STRA28</COMM></TARGET>

How much \$\$ came
through DNR for
materials sales?

Final note:

SENATE BILL NO. 211

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE TRANSPORTATION COMMITTEE

Introduced: 3/7/14

Referred: Transportation

A BILL

FOR AN ACT ENTITLED

1 "An Act providing for the Department of Transportation and Public Facilities to hold
2 the surface estate of certain state land; relating to the transfer of certain state land and
3 materials; relating to the lease, sale, or disposal by the Department of Transportation
4 and Public Facilities of rights-of-way, property interests, or improvements; relating to
5 the ^{TERM FOR} grant of certain easements ^{OR RIGHTS OF WAY THAT ARE PART OF A RECIPROCAL EXCHANGE WITH} ~~over submerged state land to the federal government;~~
6 relating to the conveyance of land for right-of-way purposes from the Alaska Railroad
7 Corporation to the Department of Transportation and Public Facilities; and providing
8 for an effective date."

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

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

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

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

8 * **Sec. 2.** AS 02.15.070(b) is repealed and reenacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determination and may

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

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

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

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

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

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

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

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

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

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

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

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

9 (2) issue bonds;

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

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

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

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

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

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

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

27 **TRANSFER OF CERTAIN MAINTENANCE STATIONS.** The Department of
28 Natural Resources shall transfer the surface estate to the access roads, camps, and airstrips at
29 Franklin Bluffs and Happy Valley on the James Dalton Highway to the Department of
30 Transportation and Public Facilities. The transfer of those properties to the Department of
31 Transportation and Public Facilities does not affect or otherwise alter current licenses and

1 permits issued by the Department of Natural Resources for use of those properties. Within 60
 2 days after the effective date of this Act, the Department of Transportation and Public
 3 Facilities shall notify a person holding a license or permit of the administrative transfer of
 4 those properties. Not later than January 1, 2015, the Department of Transportation and Public
 5 Facilities shall accept and begin to process permit and license applications through its rural
 6 airport permitting program for an activity currently authorized by permit or license by the
 7 Department of Natural Resources and normally permitted through rural airport permitting
 8 authorities. Other valid permits or licenses issued by the Department of Natural Resources
 9 continue according to the terms of the permit or license.

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

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

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

Alaska State Legislature

State Capitol, Room 9
Juneau, Alaska 99801
Phone: (907) 465-4947
Fax: (907) 465-2108



Committee Members:
Senator Dennis Egan, Chair
Senator Fred Dyson, V. Chair
Senator Click Bishop
Senator Anna Fairclough
Senator Hollis French

Senate Transportation Committee

Sponsor Statement

SB 211 – DOT Lands & Materials

SB 211 clears up Alaska law on managing and transferring land or materials from the Department of Natural Resources to the Department of Transportation and Public Facilities. Current law gives DOT&PF authority to manage state lands for airports, highways, and public facilities, but the Alaska Lands Act adds confusion and extra steps when the land it needs is held by DNR.

Today, DNR goes through an extensive analysis before transferring land or materials from one state agency to another as though it were a 'disposal' under the Alaska Lands Act. This adds time and expense to transportation projects. SB 211 makes clear that transferring land from one agency to another for the public purposes of airports, highways, harbors, and public buildings is not a 'disposal.'

This change would not apply to special areas like parks, refuges, or state critical habitat areas. Nor does it change public notice or the permitting requirements that determine whether or where projects go. It applies only to transferring land needed to build and maintain airports, highways, and public facilities. The bill makes it clear that once the legislature endorses a project, any necessary transfers from general DNR land are in the public interest and don't need an Alaska Lands Act analysis by DNR. At the same time, the bill protects public notice of those transfers.

Another issue SB 211 addresses is that DOT&PF currently isn't allowed to sell land it gets from DNR. Land DOT&PF gets from the private sector can be sold when it no longer serves a transportation or public facility need. Land DOT&PF gets from DNR currently has to be returned, which can leave adjacent landowners unable to own small strips of land between their property and a newly realigned road. SB 211 makes clear that DOT&PF can sell, under its current rules, land the state doesn't need for transportation or public facilities.

The bill also waives legislative approval of land conveyances from the Alaska Railroad to DOT&PF. This change will reduce project timelines by as much as a year when federal aid or other rules require exclusive right-of-way access.

Finally, SB 211 lets DNR make a set of existing 55-year easements permanent. By lifting the 55-year restriction on specific easements granted to the United States Forest Service, the Forest Service can reciprocally lift its 55-year restriction on easements it gave the DOT&PF for certain transportation and utility corridors through the Tongass National Forest.

SB 211 lets DOT&PF more efficiently administer the construction and maintenance programs for the state's highways, airports, and public facilities without reducing public notice or other protections.

STATE LANDS AND MATERIALS
Senate Bill 211/House Bill 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 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.

STATE LANDS AND MATERIALS
Senate Bill 211/House Bill 371

Bill Summary

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.

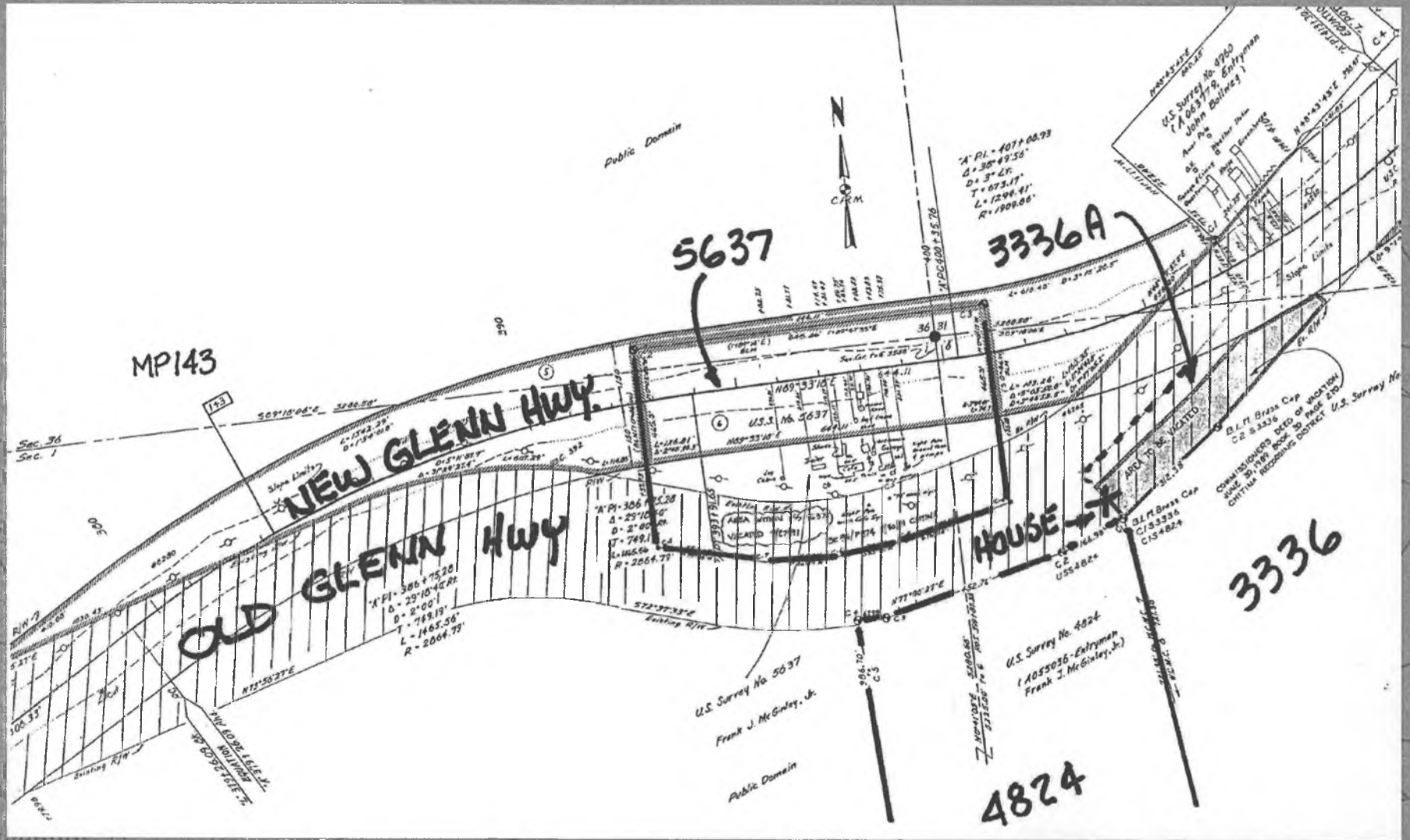
Remove Easement Term Year Restrictions

- 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.

ROW Plans – Glenn Highway Realignment



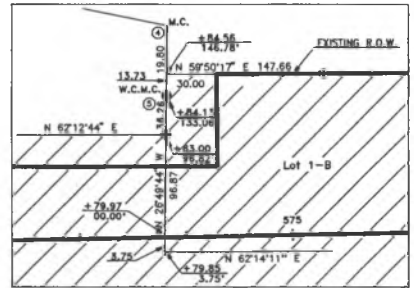
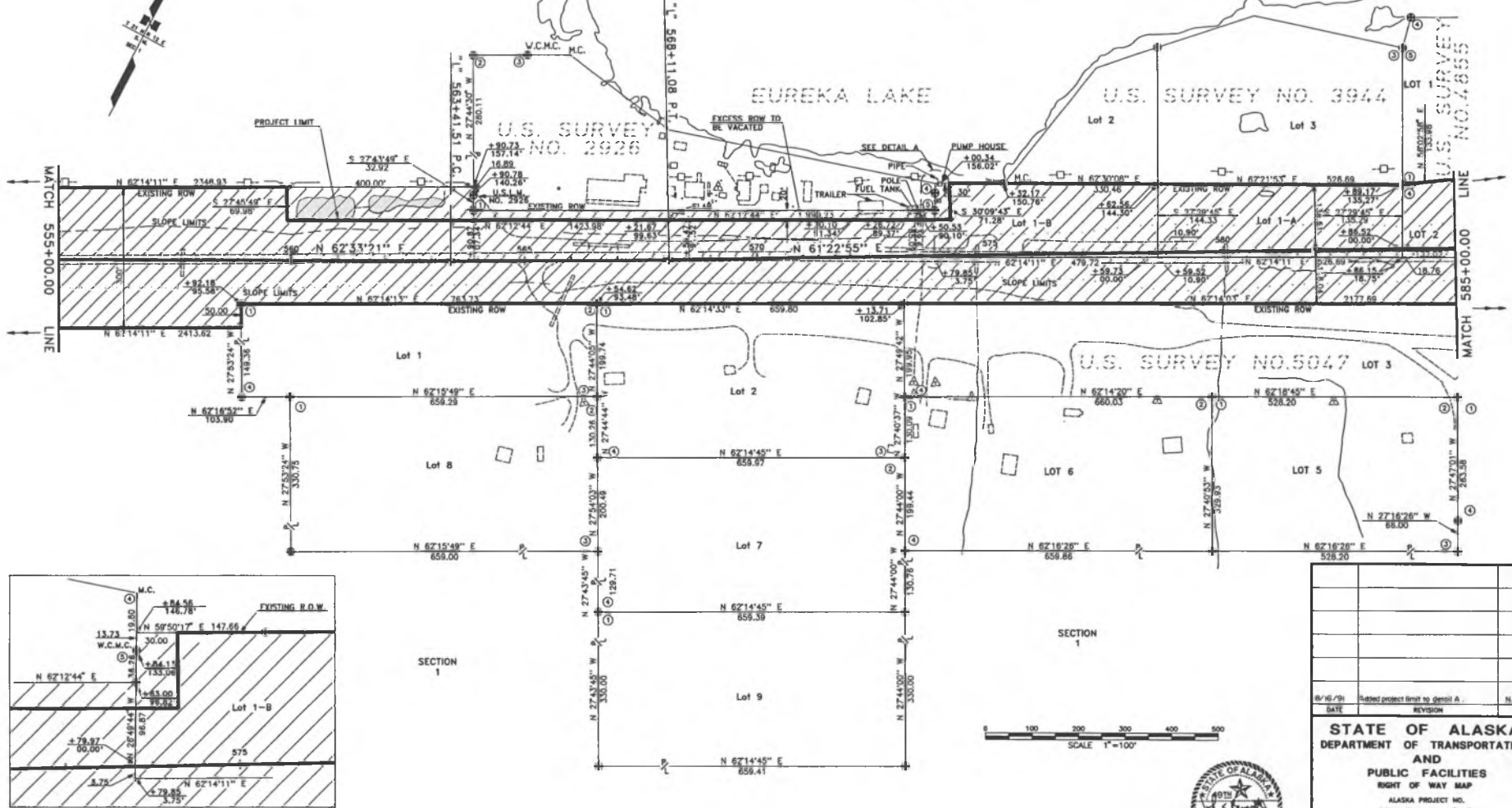
February 22, 2013



"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



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



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

SHEET 80-12 DRAWING 84388
 CLASS. MAP. 18-001-4(2)
 PROJECT NO. 18-001-4(2)

Plat 47-12
 Chitina Rec. Dist
 6/10/97

Plat 47-35
 Palmer Rec. Dist
 6/02/97

FISCAL NOTE

STATE OF ALASKA
2014 LEGISLATIVE SESSION

Bill Version SB211
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB211-DNR-MLW-3-8-14 Dept. Affected Natural Resources
 Title STATE LAND AND MATERIALS Appropriation Land & Water Resources
 Allocation Mining, Land and Water
 Sponsor Senate Transportation
 Requester STRA 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					
			FY15	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	0.0

FUND SOURCE		(Thousands of Dollars)						
		FY15	FY16	FY17	FY18	FY19	FY20	
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							
		FY15	FY16	FY17	FY18	FY19	FY20
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? _____ 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 3/8/14 12:00 PM
 Date 3/8/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SB211

Analysis

SB 211 confers upon the Department of Transportation & Public Facilities (DOT&PF) rather than the Department of Natural Resources (DNR) the primary authority to manage the surface estate of land and property interests acquired or held by the state for airports, highways and public facilities.

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

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

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
2014 LEGISLATIVE SESSION

Bill Version SB211
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) SB211-DOT-SDES-3-8-2014 Dept. Affected DOTPF
 Title State Land and Materials Appropriation Design, Engineering & Construction
 Allocation Statewide Design and Engineering Services
 Sponsor Senate Transportation Committee
 Requester Senate 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	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? Yes
 If yes, by what date are the regulations to be adopted, amended, or repealed? 12/31/2015 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 3/7/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2014 LEGISLATIVE SESSION

BILL NO. SB211

Analysis

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

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

Dana Owen

From: McKenzie, Constance M (DOT) <connie.mckenzie@alaska.gov>
Sent: Monday, March 17, 2014 3:28 PM
To: Rebecca Rooney; Dana Owen
Cc: Lynch, Sean P (LAW); Rice, Kasandra K (DOT); Bennett, John F (DOT); Tempel, Esther (DNR); Fogels, Edmund J (DNR); Kemp, Pat J (DOT)
Subject: HB371/SB211 Proposed committee substitute

Becky and Dana,

In response to questions posed by Mr. Dick Mylius during public testimony at the Senate Transportation Committee meeting on March 11, DOTPF and DNR met and discussed Section 16 of SB211/HB371 and would like to suggest the following language in a committee substitute:

Section 16: The uncodified law of the State of Alaska is amended by adding a new section to read:

~~GRANT OF CERTAIN EASEMENTS OVER SUBMERGED STATE LAND TO IMPLEMENT A RECIPROCAL EXCHANGE.~~ 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. ~~Notwithstanding a provision of state law to the contrary, the easements over submerged land identified on the map numbered 92337 and dated June 15, 2005, and that are part of the reciprocal exchange of rights-of-way and easements enacted into federal law under 199 Stat. 1177 are granted to the United States Forest Service. The easements identified in this section and granted to the United States Forest Service 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 substitute language clarifies that the bill is not directing DNR to take any action on the easements identified on the map 92337 that have not already been granted by DNR to the USFS, are not automatically granted at passage of this bill. The sole purpose of Section 16 is to allow the DNR commissioner the discretion to waive DNR's 55-year limitation.

Please let me know if you have any further questions.

Connie McKenzie
Department of Transportation and Public Facilities
Legislative Liaison
Phone: (907)465-4772
Cell: (907)723-2894
Email: connie.mckenzie@alaska.gov

Testimony of Dick Mylius to Senate Transportation Committee on SB 211
March 10, 2014

Good Afternoon,

My name is Dick Mylius, speaking as a private citizen. I have lived in Anchorage for 34 years.

I urge the committee to either reject, or significantly revise, Senate Bill 211 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 where I dealt with issues in this bill.

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 address public concerns, competing resource interests, or even valid claims by other parties to the land in question.

The bill 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. 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, and sometimes sites selected by DOT have prior competing land claims or public interests.

I'll touch on the issue of prior competing lands claims first. In the North Slope Borough, DOT has existing and future interest in gravel pits and the two airstrips at Happy Valley and Franklin Bluffs (specifically mentioned in Section 15 of SB 211). I did not have time to check state land records, but I believe that these lands are still selected by the North Slope Borough as part of its municipal land entitlements from the state. This legislation directs DNR to transfer these parcels to DOT. Even if the intent of DNR or the legislature is to reject the municipal selections of these lands, four months is not adequate time for DNR to issue a decision rejecting the Borough's selections, allow for the statutorily required public notice and comment, and resolve likely appeals from a municipal government.

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.

In addition to overriding DNR's ability to protect or at least adjudicate competing interests in the land, the bill would not allow DNR to address conflicts with adjoining uses or access concerns. Under the existing process, DNR looks at adjacent land 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 SB 211 DNR could not attach such conditions to the land transfer. Public access would be lost.

Section 16 of SB 211 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 SB 211 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 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, ownership. 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 they should be transferred, the legislation (page 8, lines 13-17) appears to transfer easements on these remaining 67 sites to the US Forest Service without the required public notice required by Article VIII, Section 10 of the Constitution.

Finally, 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.

Thank you for the opportunity to testify today.

March 11, 2014

The Honorable Senator Dennis Egan
Chairman, Senate Transportation Committee
State Capitol
Juneau, Alaska 99801

RE: SB 211 - Additional comments and written version of oral testimony

Dear Senator Egan:

Attached for the Senate Transportation Committee is a copy of my oral testimony on Senate Bill 211 that I presented at the Tuesday, March 10 meeting of the Senate Transportation Committee.

I would also like to offer the following supplemental comments, primarily in response to comments made by DOT and Department of Law in response to my testimony.

Regarding the wording "subject to valid existing rights" in sections 3 (page 2, line 29-30), Section 5 (page 4, lines 29-30) and Section 8 (page 5, lines 10-11), this language would not protect municipal land selections or other conflicting requests for the land. As I previously noted, under SB 211 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. Also, sites such as gravel pits, may have been requested for other public uses by state agencies, these requests would be rendered moot once DOT applies for this land. The DOT use (a gravel pit) may also not be the economically most valuable use of the land. Again, under SB 211, 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.

Regarding the Reciprocal Agreements in Section 16, Mr. Lynch is correct that the DNR and USFS agreed that existing state law provided adequate public access. Hence, for a number of sites on map 92337, no easements were necessary or issued. However, the language in Section 16, line 15-17, clearly states that "... the easements over submerged lands identified on the map numbered 92337 ... *are granted* to the United States Forest Service" (emphasis added). It does not say some of the easements, or only those that DNR has already granted, it says all of the ones on the map.

A final issue that I did not raise in my testimony regards Section 13. Section 13 appears to grant to DOTPF 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 DOTPF to take whatever it wants out of these pits and offers no protection for the 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.

My second concern with Section 13 is that it gives DOTPF 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 hearing where the committee was assured that the bill only applies to "state public domain" land.

Again, I thank the committee for the opportunity to testify at the Senate Transportation Committee hearing and hope the Committee gives serious consideration to 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

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 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 head 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 DOTs purpose and DNR shall transfer to DOT "whatever" DOT wants and desires.

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

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

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

DNR is the state agency set up to manage public resources for all of Alaska. It is the multiple use agency that addresses public concerns through an open public process. Granted this takes time to accomplish

but doesn't the public deserve that time that it takes to make an informed decision rather than what appears to be a gigantic land grab for DOT for DOT's purposes without any checks and balances.

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

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

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

Chris Milles
1603 Carr Ave
Fairbanks, AK 99709
907-978-2293

North Slope Borough

PLANNING AND COMMUNITY SERVICES DEPARTMENT



P.O. Box 69
Barrow, AK 99723
☎ (907) 852-0320
Fax: (907) 852-5991
Email: Rhoda.Ahmaogak@north-slope.org

Rhoda Ahmaogak, Director

March 21, 2014

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

Subject: Senate Bill 211

Dear Senator Egan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

Rhoda Ahmaogak, Director
Department of Planning
North Slope Borough

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

To: Senate Transportation Committee Members
From: Lisa Weissler, Attorney
Date: March 24, 2014
RE: Public Comments – SB 211

The sponsor statement for SB 211 provides a rather innocuous description of the bill, yet the legislation proposes significant changes in state law, some of which raise constitutional issues.

As currently drafted, SB 211 raises many questions and constitutional concerns, and risks creating more complications and uncertainty. Even if there were legally supportable explanations, it would be far better for future regulators and the public if these laws were written so that they are unambiguous. Someone reading these statutes should not have to review the bill file and administration’s testimony to divine their meaning.

The following table illustrates potential constitutional issues with the legislation:

Alaska Constitution	Current Law	SB 211	Constitutional Issues
	Under AS 38.05.030, state land assigned by DNR to DOT&PF must be returned to DNR when the land is no longer needed for the purposes assigned.	Under the proposed legislation, the return of state land to DNR is optional and DOT&PF may dispose of state land under its own authorities.	AS 38.05.030 has been in place at least since before 1984, and possibly as early as 1959. Returning state land to DNR ensures the land is managed or disposed of in a way that meets state constitutional requirements.
Art. 8, Sec. 9: “[T]he legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures...”	DNR may sell or otherwise dispose of state land through established statutes (AS 38.05.045 to 38.05.069). There is a specific statute for the sale of right-of-way remnants where DNR may convey remnants to an adjoining landowner for fair market value upon a determination the sale is in the state’s best interests. See AS 38.05.035(b)(7)	DOT&PF may sell state land it no longer needs, including material sites and remnants, under terms, standards and conditions established by the commissioner.	DOT&PF’s current statutory authorities governing the disposal of land are limited to disposing of private land. It is the legislature’s constitutional duty to establish statutes that provide for the sale of state land. Allowing DOT&PF to establish its own terms for disposal of state land violates the constitutional requirement that the legislature establish the law, and may violate the separation of powers doctrine.

Alaska Constitution	Current Law	SB 211	Constitutional Issues
<p>Art. 8, Sec. 10: "No disposals or leases of state land, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law."</p>	<p>Under AS 38.05.035(e), DNR sells, leases, or approves disposals of state land, resources, property, or interests upon a written finding that the disposal is in the state's best interest; and provides for a comprehensive public notice standard under AS 38.05.945 - .946.</p>	<p>No statutes are proposed regarding the process for DOT&PF's disposal of state land. DOT&PF is not required to use the comprehensive public notice standard required for the disposal of state land under AS 38.05.945 - .946.</p>	<p>Land transferred from DNR to DOT&PF remains state land subject to constitutional requirements for its disposal to third parties. It is the legislature's duty to establish the laws regarding the disposal of state land, and these laws must meet constitutional requirements.</p>
<p>Art. 8, Sec. 1: "It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."</p> <p>Art. 8, Sec. 6. "Lands and interests therein ... not used or intended exclusively for governmental purposes, constitute the state public domain."</p>	<p>Under AS 38.05.285, the disposal and use of state land shall conform to the state constitution and principles of multiple purpose use consistent with the public interest.</p> <p>Under AS 38.04.070, public domain land is land available for settlement and development.</p>	<p>A transfer of state land vests control of the surface estate in DOT&PF, including rights to extract material and develop the land.</p> <p>The legislation may limit, or even preclude DNR from management of DOT&PF-owned material sites.</p>	<p>In its response to public comments, citing Art. 8, Sec. 6 of the constitution, DOT&PF says it will not manage state land for multiple uses as DNR does because land used for government purposes is not included in the public domain (March 18, page 3).</p> <p>Article 8, section 6 describes lands not set aside for government purposes as public domain – that is, land that is available for private settlement and development. The section does not exempt state land from the other constitutional requirements. Since statehood, DNR has managed land used for governmental purposes in conformance with the constitutional principle of multiple use. There is no basis for DOT&PF to exempt itself from this requirement.</p>

SECTIONS 1, 6, 9 & 3, 5, 8

Sections 1, 6, and 9 give DOT&PF primary authority to manage the surface estate for highway, airport, and public facility lands, though seemingly still subject to DNR's permitting authority. The proposed language in Sections 1, 6, and 9 indicates DOT&PF will have the discretion to require terms and conditions applicable to DNR permitting requirements.

- How will DOT&PF establish terms and conditions applicable to DNR authorizations? By regulation? Project-by-project? If by project, how will the public be notified of any changes to the terms or conditions of a permitted activity?
- What types of terms and conditions might DOT&PF apply to DNR permits? Are there any limits?
- Since presumably DOT&PF is the permit applicant, how can it be appropriate for them to set the terms and conditions for their own activities?

Sections 3, 5, and 8 convey title of state land to DOT&PF, making DOT&PF the sole owner and land manager of the surface estate for highway, airport, and public facility lands, including the right to extract materials and develop the land for transportation, utility and related purposes.

- Are material extraction and development activities still subject to DNR's permitting authority as indicated by sections 1, 6 and 9 even though control of the surface estate is being vested in DOT&PF and DOT&PF is being given the right to extract materials and develop the land?

Thank you for consideration of my comments.

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

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

Sent via email

March 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

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

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

Sent via email

March 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

AMENDMENT

OFFERED IN THE SENATE
TO: SB 211

BY SENATOR EGAN

1 Page 1, line 5:

2 Delete "**grant of certain easements over submerged state land to**"

3 Insert "**term for certain easements or rights-of-way that are part of a reciprocal**
4 **exchange with**"

5
6 Page 8, lines 12 - 20:

7 Delete all material and insert:

8 "TERM OF CERTAIN EASEMENTS TO IMPLEMENT A RECIPROCAL
9 EXCHANGE. The easements identified on the map numbered 92337 and dated June 15,
10 2005, and that are part of the reciprocal exchange of easements or rights-of-way and
11 easements enacted into federal law under 119 Stat. 1177, may have a term of years for a
12 period of more than 55 years if the commissioner of natural resources determines the length of
13 the term to be in the best interest of the state."



March 25, 2014

Senator Dennis Egan
Senate Transportation Committee
State Capitol Room 9
Juneau, AK 99801

RE: SB 211

Dear Dennis

Cruz Construction Inc. is an Alaskan owned and operated business. We have projects all over the state year round. I am writing to you in support of Senate Bill 211.

As the old saying goes, "Alaska has 2 seasons, winter and construction season." If SB 211 passed this would greatly benefit all construction trades in Alaska. The lessened wait time for permits would create projects to start quicker in turn would create us to have projects finished sooner and possibly cheaper.

SB 211 would create a streamline process for Construction projects that need permits for gravel sources near state lands. So many projects in the past have been delayed up to 2 years waiting for legislator approval. Cruz Construction Inc. creates jobs for Alaskans. We need to help build our economy all the while building Alaska for the future. Cruz Construction fully supports this legislation and hopes for its quick passage. Thank you for hearing SB211.

We look forward to a quick passage of SB 211.

Best,

A handwritten signature in cursive script, appearing to read "Dave Cruz".

Dave Cruz, President of Cruz Companies



U004N014E

U004N014E

503 Acres

U004N014E

U004N014E

Proposed Franklin Bluffs Airport Dimensions		
	Length	Width
RSA	5300'	150'
RW	4700'	75'
Parallel TW	734'	75'
TWSA	734'	171'
RPZ	1510' x 1000' x 1700'	
Apron	800'	200'
Lease lots	200'	200'
Access Road	1784'	24'

Legend

- Public Access to Dalton
- Future Ramp_Apron Use
- ADOT&PF Maintenance Use Area

Layer

- Access Road
- Apron
- Property Boundary
- RPZs
- Runway
- Runway Safety Area
- Taxiway
- Taxiway Safety Area

U004N014E

U004N014E



Proposed B-II Franklin Bluffs Layout



19

20

1510' x 1000' x 1700' RPZ

Umiat Meridian
Township 3 South, Range 14 East
Sections 19, 20, 29, 30, 31

Current Happy Valley Airport Dimensions		
	Length	Width
RSA	5100'	150'
RW	4500'	75'
Parallel TW	490'	75'
TWSA	490'	171'
RPZ	1510' x 1000' x 1700'	
Apron	800'	200'
Lease lots	200'	200'

Legend

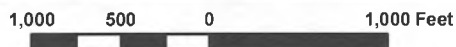
Rip Rap

30

29

31

32



Proposed B-II Layout

Happy Valley, Alaska

Present DNR/DMLW authorizations at Happy Valley

March 2014

Land Use Permits

- LAS 22444 ADF&G Shack – research base
- LAS 22798 Deltana Outfitters – air taxi and big game guiding operation
- LAS 23618 Trooper's Shack – base for enforcement operations along Dalton Hgwy
- LAS 26412 McCrary fixed wing air taxi operation - hunters
- LAS 28726 McCrary's lodge – helicopter operations – N. Slope research projects

There are four permitted authorizations for temporary summer air taxi operations out of the Thoft area at Happy Valley

- ADL 41979 Bob Thoft in conjunction with old lease/temporary permit for activities on Ivashak River.
- LAS 28821 Matt Thoft for operations in Ivashak River and Happy Valley
- LAS 28833 Brett Thoft – air taxi operations Happy Valley - hunters
- LAS 29009 Dan Sailor – air taxi operations Happy Valley - hunters
- LAS 29384 Curt Bedingfield – LUP application for air taxi operation (recreationists) in area recently vacated by Arrowhead Air Taxi (LAS 26875)

State Pipeline Coordinator's Office recently issued a land use permit

- LAS 29396 Alyeska Pipeline Service Company – staging area on south gravel pad at Happy Valley

Note: There are two former contaminated sites, resulting from previous TAPS pipeline construction camp activities, associated with the Happy Valley area. DEC requires annual monitoring of the sites as an institutional control. ADL 420028 is the casefile associated with the site east of the Dalton Highway near the airstrip. ADL XXXXX is located on the west side of the Dalton Highway, across from the airstrip.

Present DNR authorizations at Franklin Bluffs

March 2014

Land Use Permits:

- LAS 20031 issued to DOT for material storage along the north edge of the front pad (expires 2.16.17).
- LAS 25549 issued to Marsh Creek LLC for off-road travel. They travel across the tundra towards Umiat from the staging/camp area authorized under LAS 27609.
- LAS 27609 issued to Marsh Creek LLC for camp space on the back pad, behind the gate, used to stage for the Umiat PCB clean up work. It is expected that the PCB clean-up work will end this year; but, it is likely that Marsh Creek will get another federal clean up contract (Umiat land fill) and want to continue to stage from there.

- SPCO has authorized off-road travel associated with the TAPS line under stipulation 2.9.1 of the ROW lease, ADL 63574.

- There is one probable LUP for the near future. Bortek LLC (New Horizons Telecom) has proposed running a fiber optic line between Fairbanks and Deadhorse. Their Plan of Operations states that they would use Franklin Bluffs pad as a staging/storage area. No applications received to date.

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