

## Seward Highway ROW Ownership (Draft Opinion)

- ❖ Is the existing Seward Highway ROW held by DOT in fee?
  - Yes: DOT received fee title by 1957 legislative authorization.
    - 152 SLA 1957(AS 19.05.080) authorized DOH to acquire or condemn private and public lands for highways.
    - 152 SLA 1957 (AS 19.05.040(9)) authorized DOH to accept federal property for highways.
  - DNR authority recognizes DOT authority
    - 169 SLA 1959 establishes Division of Lands and recognizes DOT real property authority.
    - Alaska Land Act 61 SLA 1960 (AS 38.05.030(b)) recognizes DOT authority to acquire, dispose and exchange as an exception to DNR's authority.
    - ALA definition of "State land" conflicts with DOT independent authority.
    - "Highways" authority was established prior to "DNR Lands".
  - Federal highways could only be transferred to DOT
    - PL 86-70 Omnibus Act authorized transfer of highways, airports and public facilities to state
    - June 1959 Omnibus QCD transferred...real property interests [**"all rights, title and interest"?**...] DOT was the only state agency authorized to accept federal highway property.
  - Alaska Constitution separately recognizes highways/public facilities, public domain lands and ability to designate public domain for specific purposes.
    - Art. 8 Sec. 5 (DOT) Facilities and improvements
    - Art. 8 Sec. 6 (DNR) State Public Domain excludes lands for **exclusive government purposes** (highways, airports & public facilities).
    - Art. 8 Sec. 7 (Chugach State Park) Special Purpose sites...historic, recreational or cultural.
    - As the "State Public Domain" does not include "exclusive government purpose transportation properties", when a portion of the public domain is designated for a special purpose (Chugach State Park), it cannot include the highway ROW.
    - To allow special purpose designated lands to include highway ROW would be outside the authority granted in Art. 8, Sec. 7 of the constitution and create incompatible land management problems.
    - To read the Constitution and statutes consistently, **DOT holds fee title and has exclusive management authority over Omnibus QCD highways that cross state owned lands.** [**This is not the case with Omnibus QCD highways that cross other than state owned lands. While DOT may have exclusive management authority over these ROW, the interest is a highway easement as opposed to a fee interest.**]
  - Fee or easement? (See Page 8 of 8)
    - Sean's draft follows the 1985 opinion that the State received the entire (!!!) federal interest under the QCD not just the easement interest held by the Dept. of Commerce.
    - Sean then follows that as the Omnibus highway interest had been conveyed was in fee, "these exclusive government use properties were not available for DNR's selection...".
    - Page 10 of 10 – DNR theory that Omnibus Act only conveyed an easement. Sean: even if QCD did not convey all federal interest, state law would have placed state's fee interest with DOT. If an easement, use and control of easement prevents "merger of title".

- ❖ Land exchange: Can DOT convey the ROW in part to DNR and ARRC? - Yes
  - DOT has full authorization to exchange or dispose excess highway ROW.
  - 2000 SLA 116 authorized the exchange but limited the Chugach conveyance to DOT to an easement interest. This is still sufficient to meet our needs but it was likely a result of the erroneous belief by the legislature that the existing Seward Highway ROW was only an easement.