

DOTPF 2014 LEGISLATION

Problem Statement

DOTPF is fully authorized by Title 02 (Airports), Title 19 (Highways), and Title 35 (Public Facilities) to acquire, manage, and dispose property. DOTPF's acquisitions, management, and disposals are governed primarily by these three state laws, the regulations that implement these state laws, and the federal laws and regulations that govern transportation infrastructure and public facilities constructed with federal funds. Being that transportation infrastructure and public facilities are used exclusively for government purposes, there are no multiple use considerations or requirements in the state and federal authorities governing DOTPF's property management.

The bulk of properties managed by DOTPF were transferred by the federal government at statehood through the 1959 Omnibus Act Quitclaim Deed. The State of Alaska was named as the grantee in the Omnibus QCD, as opposed to DOTPF, so by historic artifact DNR holds title to most state highways, airports, public facilities, material sites, maintenance stations, and other properties intended to support transportation infrastructure and public facilities. In the course of developing the state's transportation infrastructure and public facilities, DOTPF has acquired fee title over former private lands, municipal lands, native allotments and other properties, but only receives easements or other less-than-fee interests from DNR when state-owned land is necessary for public infrastructure development. The end result is that almost every state highway and airport is constructed over a patchwork quilt of state-owned land—portions owned by DOTPF and portions owned by DNR—with consistency of title for public facilities not much better.

This state-owned infrastructure is managed by DOTPF under the federal and state authorities governing these properties; however, the portions of each piece of infrastructure where DNR retains title have an additional regulatory overlay of DNR's "multiple use" management requirements from the Alaska Lands Act. DNR-DMLW's secondary management and oversight of the state's transportation infrastructure and public facilities runs counter to the state's constitution and laws, creates unnecessary regulatory burdens, and consistently delays the delivery of state infrastructure that the legislature funds and directs DOTPF to provide. DNR's participation in and review of DOTPF's property management also causes unnecessary additional work for DNR staff.

DOTPF's legislation would recognize the Constitution's Article VIII Section 6¹ distinction between state public domain lands, which are managed by DNR-DMLW

¹ **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

under the multiple use principles of the Alaska Land Act, and DOTPF properties that are used or intended for exclusive government purposes. The legislation should not be controversial as the provisions are drawn primarily from the 2005 bill that exempted UA from the Alaska Land Act, and they also draw from the bills exempting ARRC and MHT from the same. As a practical effect, the legislation will allow DOTPF to acquire and dispose property necessary for the proper management of its facilities in a matter of months rather than the years, or indefinite delays, experienced trying to comply with DNR-DMLW's Alaska Land Act requirements. Specifically, the legislation would:

- Declare that lands conveyed to the State of Alaska under the Omnibus QCD, and all current and future state airport, highway, and public facility lands, are not “state public domain.”

The clarification that DOTPF has exclusive authority to hold title to state-owned airports, highways and public facilities would remove any perceived inconsistencies between DOTPF's statutory authorities and the Alaska Land Act, and would ensure alignment of state statutes with the Article VIII Section 6 of the Constitution.

- Creates a presumption that the transfer of land or materials from DNR to DOTPF for construction or maintenance of an airport, highway, or public facility is in the public interest. Under the legislation, the commissioner of DNR can withhold the transfer of land or materials for a DOTPF construction project if the proposed transfer is contrary to public interest.
- Clarify that transfers of land or materials from DNR to DOTPF for construction or maintenance of an airport, highway, or public facility is not a “disposal” of state land.

The framers of the Constitution had the foresight to exclude from the state public domain land that is “*intended* exclusively for government purposes.” Thus, the inventory of exclusive government purpose land was not fixed in time in the 1956 drafting, but also includes those lands necessary for infrastructure improvements, extensions, or additions. The legislation would remove any doubt that a transfer of property from DNR to DOTPF for airport, highway, or public facilities purposes is not a “disposal” of state land.

- Require that public domain land necessary for the construction or maintenance of a DOTPF project be transferred from DNR to DOTPF within four months, unless found contrary to public interest by DNR commissioner.

selection of lands granted to the State by the United States, and for the administration of the state public domain.

Although DNR and DOTPF are sister agencies, property transfers from DNR to DOTPF are rarely completed in less than two years. Federal agencies are able to transfer property for DOTPF projects in less than four months, since federal law requires them to do so. DNR should be able to attain similar processing timelines, without the burden of reviewing the proposed transfers under the multiple use standards of the Alaska Land Act, since the legislation clarifies property transfers from DNR to DOTPF are not “disposals” (thus, not requiring an extensive Alaska Land Act review), and construction and maintenance of DOTPF projects are presumed in the public interest.

- The legislation authorizes DOTPF to dispose remnants of land obtained by DOTPF through DNR transfer where the remnant is created by highway alignment or realignment.

Because highway realignments cause the physical shifting of a highway, rights-of-way must be acquired to accommodate the shift, and parallel portions of rights-of-way become in excess of the required highway right-of-way widths. DOTPF is authorized by statute to dispose of this excess right-of-way to neighboring property owners so they can expand their yards or business entryways to meet the newly realigned highway. For lands held by DOTPF in fee, this is a fairly simple transaction with the neighboring property owner. When the underlying fee is held by DNR, the transaction becomes very complex and is often impossible, as the Alaska Land Act does not authorize neighboring property preferences. In the patchwork quilt of state highway property ownership, some neighboring property owners get normal streamlined transactions and some get caught in a regulatory quagmire. The proposed legislation would greatly assist the latter category of neighboring property owners.

- The legislation would clarify that DOTPF’s extraction and use of materials from state-owned materials sites is not a “disposal” when used for the construction or maintenance of a DOTPF project. The legislation also authorizes DOTPF unrestricted access and use of state-owned material sources and sites.

Obtaining DNR authorization for DOTPF access and use of state-owned material sites has been a major issue for years. DOTPF’s lack of assured access to state-owned material sites consistently places DOTPF projects in precarious positions with regard to compliance with federal funding requirements; with DNR’s conditioned or limited approval for access to sites regularly coming in just before DOTPF’s final deadlines. DNR-DMLW reset the clock on its multi-year backlog of expired material sales contracts and entry authorizations for DOTPF with its 2012 material sites legislation. However, the legislation did nothing to assure DOTPF regular and consistent access to state-owned materials—DNR still

requires DOTPF to seek permission and negotiate payment for access and use of state-material sites. This legislation would assure timely access to state-owned materials and timely delivery of DOTPF construction and maintenance projects.

- As the legislation is forward looking, and anticipates that DOTPF will open material sites in the future, the legislation authorizes DOTPF to sell excess materials to the public from DOTPF-owned sites. This particular provision (Sec. 5, proposed AS 19.05.080(b)(2)) would not apply to DNR-owned materials sites.
- The legislation allows DOTPF to lease or dispose of unused or underutilized public facilities to the government entities that currently operate and maintain the properties.

Currently DOTPF is only authorized to dispose of public facilities to the former fee holder or to DNR when the facilities are no longer used for public purposes. Throughout the state there are state-owned public facilities where public services are provided by municipal and tribal agencies. Transfer of these properties to the non-state tenants is incredibly complicated (and often impossible) when DNR is the required middle-entity in the transaction. The legislation would allow DOTPF to directly lease or dispose of these public facilities.

- The legislation would allow removal the term of year restrictions from the reciprocal easements exchanged between the state and federal governments in SAFETEA-LU § 4407. The highway and utility easements issued to DOTPF from the U.S. Forest Service contain a 55-year limitation, as the log transfer facility easements issued to USFS from DNR have a similar limitation. This legislation would authorize the removal of the state term of year limitations, so that the federal government may remove their similar limitations.
- The legislation waives legislative approval of land conveyances between ARRC and DOTPF. It is very unlikely that ARRC's statute intended to require legislative approval of intra-agency conveyances to and from the adjacent and overlapping transportation rights-of-way. Legislative approval regularly takes one- to two-years. This amendment would greatly reduce development time for affected projects.
- The legislation would transfer the state-owned lands at the Dalton Highway's Franklin Bluffs and Happy Valley work camps. DOTPF's request for these sites has been pending with DNR for nearly twenty years. DOTPF's need for these sites as maintenance stations and airstrips is becoming increasingly important with the recent resource development proposals in this corridor.