

Excerpt from AGO DNR dated 10/28/15 memo in response to AGO DOT&PF memo dated 7/8/15 regarding Seward Highway Right-of-Way Ownership – Merger of Title discussion.

Title to rights-of-way conveyed under the Omnibus Quitclaim Deed merged with title to statehood selections upon tentative approval.

The Public Land Orders establishing the Seward Highway reserved the highway from the then-federal public domain.²² Subsequent legislation and PLOs revoked the highway reservations and replaced them with traditional highway right-of-way easements.²³ These easement interests were conveyed to the State pursuant to the Alaska Omnibus Act in 1959,²⁴ and management of them remained with the Bureau of Public Roads, which became a state agency at statehood.²⁵ Where the State selected parcels surrounding roadways on the OQD schedules as part of its statehood entitlement, title to the right-of-way merged upon conveyance (or tentative approval) with the State's title to the selected land beneath and around it, but the public road right-of-way remained intact and managed by ADOT. Statehood selection patents are issued "to the State of Alaska as a sovereign entity and not to any particular agency of the State government. Thereafter, fee title rests in the State of Alaska."²⁶ Thus, the more defensible conclusion is that the Omnibus Act conveyed only the highway right-of-way to the State, to be managed by the Bureau of Public Roads, and that the right-of-way was preserved by operation of law when the underlying fee interest vested in the State upon tentative approval (and later patent) by BLM of the surrounding selection. ADOT therefore holds a highway right-of-way and DNR manages the fee interest in its capacity as the State's land manager.

²² See, e.g., *State v. Alaska Land Title Ass'n*, 667 P.2d 714, 718-20 (1983).

²³ Lynch Memo at 8-9 (discussing PLO 757, 16 Fed. Reg 10749 (Oct. 16, 1951)); Pub. L. No. 892, 70 Stat. 787; PLO 1613, 23 Fed. Reg. 2376 (Apr. 7, 1958)).

²⁴ Alaska Omnibus Act, Pub. L. No. 86-70, § 21, 73 Stat. 145 (1959)

²⁵ Sec. 2, art. III, title I, ch. 152 SLA 1957 (enumerating the general powers of the Alaska Highway and Public Works Board); Alaska Statehood Act, Pub. L. No. 85-508 § 8(d) (1958) (providing that Territorial laws in force at statehood continue to be effective unless modified by the Statehood Act or the Alaska Constitution or until modified by the Alaska Legislature).

²⁶ BLM Instruction Memorandum No. AK 82-296 (July 28, 1982)