

State of Alaska FY2005 Governor's Operating Budget

Department of Natural Resources Title Acquisition & Defense Component Budget Summary

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Component: Title Acquisition & Defense

Contribution to Department's Mission

To acquire, accept, convey, and defend title to land or an interest in land on behalf of the State of Alaska. This is a basic function of any state in the Union, but is particularly significant to Alaska as we received the largest land grant ever awarded to a state. Clear title is critical for Alaska's state land to support resource development, revenue generation, and to provide land for the settlement and the development of Alaska. Article VIII, Section 6 of the Constitution of Alaska sets forth the policy concerning natural resources, which reads: "State Public Domain...The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain." The public expects that the state will acquire and defend its valuable assets of land and the associated resources the same as any prudent person would manage his or her own personal assets.

Core Services

This component funds five core services: the acquisition of state land; the transfer of land out of state ownership; the defense of assertions against state ownership interests; the production of title reports to facilitate resource development and land disposals; and the creation and maintenance of hard copy and electronic records to document these actions.

State land and its related resources such as timber, minerals and oil and gas form the economic base for the State of Alaska. At statehood, the U.S Congress granted Alaska up to 106.2 million acres of land under a variety of federal land entitlements. The state has yet to receive title to 15 million acres of this statehood entitlement and awaits survey by the federal government to over 60 million acres.

In addition to statehood entitlements the state acquires full title or partial interests in other state lands by direct purchase, donation, escheat, condemnation and grants under special congressional legislation for public purposes such as public facilities, state parks and refuges. This also includes Exxon Valdez Oil Spill acquisitions. Acquisitions of less than fee title interest include surface easements, airspace easements, airport clear zone easements, leases, fish weir permits, conservation easements, equitable servitude, etc.

Additionally, under the equal footing doctrine, at Statehood Alaska received title to approximately 65 million acres of shorelands, tidelands, and submerged land, which includes land under inland waterbodies and marginal seas. Work is also performed under this component to secure easements granted for public access across certain federal lands under federal statute RS 2477.

Defending state title against challenges is a fundamental responsibility of the state. Realty Services staff reviews all federal decisions involving land transfers to the state and conveyances to ANSCA corporations to ensure that state and public interests are protected. With regard to ANCSA conveyances, BLM decisions are reviewed to ensure that access to public land or water, or state title is not compromised by the decision. Staff adjudicates requests from the federal government to reconvey lands wrongfully conveyed to the state in order to fulfill individual Native Allotment claims. Staff also responds to litigation like the past Mental Health Trust Lands Settlement and the current School Trust litigation. And finally, staff provide technical support to the Attorney General's Office when needed to file appeals to federal decisions or to respond to ownership challenges to state owned uplands, submerged lands and tidelands.

End Results	Strategies to Achieve Results
<p>(1) Acquire, defend, and maintain clear title to the land promised at Statehood.</p> <p><u>Target:</u> Acquire 250,000 additional acres for the state under the Statehood Land Entitlement.</p>	<p>(1) Acquire Land</p> <p><u>Target:</u> Acquire 250,000 acre under Statehood Act and other land entitlements.</p> <p><u>Measure:</u> Number of acres acquired.</p>

End Results	Strategies to Achieve Results
<p><u>Measure:</u> Number of acres acquired.</p> <p><u>Target:</u> Defend the state's title to 90 million acres of previously conveyed land and 60 million acres of tidelands, submerged lands and shorelands.</p> <p><u>Measure:</u> Percentage of federal ANCSA conveyances and allotments reviewed by DNR.</p>	<p><u>Target:</u> Acquire land for public purposes, as donations, etc. through the Other State Lands and similar programs.</p> <p><u>Measure:</u> Acquire up to 5,000 acres under these programs.</p> <p>(2) Ensure clear title to state land proposed for development by preparing title reports for state land.</p> <p><u>Target:</u> Provide title reports for 405 parcels of state land proposed for leasing or exploration.</p> <p><u>Measure:</u> Number of leases/exploration supported by title reports.</p> <p><u>Target:</u> Provide title reports for 1200 parcels of state land proposed for land sales, land lease, timber sales, and other development activities.</p> <p><u>Measure:</u> Number of title reports prepared.</p> <p>(3) Facilitate the use and development of state land by preparing title documents (patents, deeds, etc.) to transfer title of state land to private individuals.</p> <p><u>Target:</u> Issue Conveyance Documents to 100% of individuals (estimated 650) who have completed their purchase, municipalities once land is surveyed, and other parties.</p> <p><u>Measure:</u> Number of conveyance documents prepared; backlog of conveyance documents.</p> <p>(4) Defend State's Title to the land it owns, including land under tidal and navigable waters, and assert public's access rights.</p> <p><u>Target:</u> Review 100% of BLM conveyance documents affecting state land and ensure that state land and public access issues are adequately dealt with.</p> <p><u>Measure:</u> Review 1500 Native Allotment actions and 300 BLM ANCSA conveyance and ANCSA Section 17(b) access documents.</p> <p>(5) Maintain records of State Ownership.</p> <p><u>Target:</u> Protect existing state land title documents and file new documents through filing 100% of existing documents safely retained.</p> <p><u>Measure:</u> Number of files updated and retained.</p>

Major Activities to Advance Strategies	
<ul style="list-style-type: none"> • Review 400 BLM and other decisions regarding land transfers. • Negotiate conditions included in title documents. • Accept and record title documents for state. 	<ul style="list-style-type: none"> • Prepare title report for all other state land actions. • Issue title documents for lands transferred out of state ownership (ie. to municipalities and individuals) • Review all Federal Native Allotment actions that may

Major Activities to Advance Strategies

- Review and accept 150 title documents for the OSL program.
- Prepare title reports for state oil and gas lease sales.
- Prepare title reports for state land sales and leases.
- Prepare title reports for state timber sales.
- impact state land title or public use and access.
- Review all Federal land conveyance documents (primarily under ANCSA) to ensure that public access is reserved.
- Support litigation in defense of state's land title.
- Create, file, maintain and monitor use of files, all state land records (approx. 200,000 documents).

FY2005 Resources Allocated to Achieve Results

FY2005 Component Budget: \$1,182,500

Personnel:

Full time	15
Part time	0
Total	15

Performance Measure Detail

(1) Result: Acquire, defend, and maintain clear title to the land promised at Statehood.

Target: Acquire 250,000 additional acres for the state under the Statehood Land Entitlement.

Measure: Number of acres acquired.

Target: Defend the state's title to 90 million acres of previously conveyed land and 60 million acres of tidelands, submerged lands and shorelands.

Measure: Percentage of federal ANCSA conveyances and allotments reviewed by DNR.

(1) Strategy: Acquire Land

Target: Acquire 250,000 acre under Statehood Act and other land entitlements.

Measure: Number of acres acquired.

Target: Acquire land for public purposes, as donations, etc. through the Other State Lands and similar programs.

Measure: Acquire up to 5,000 acres under these programs.

(2) Strategy: Ensure clear title to state land proposed for development by preparing title reports for state land.

Target: Provide title reports for 405 parcels of state land proposed for leasing or exploration.

Measure: Number of leases/exploration supported by title reports.

Target: Provide title reports for 1200 parcels of state land proposed for land sales, land lease, timber sales, and other development activities.

Measure: Number of title reports prepared.

(3) Strategy: Facilitate the use and development of state land by preparing title documents (patents, deeds, etc.) to transfer title of state land to private individuals.

Target: Issue Conveyance Documents to 100% of individuals (estimated 650) who have completed their purchase, municipalities once land is surveyed, and other parties.

Measure: Number of conveyance documents prepared; backlog of conveyance documents.

(4) Strategy: Defend State's Title to the land it owns, including land under tidal and navigable waters, and assert public's access rights.

Target: Review 100% of BLM conveyance documents affecting state land and ensure that state land and public access issues are adequately dealt with.

Measure: Review 1500 Native Allotment actions and 300 BLM ANCSA conveyance and ANCSA Section 17(b) access documents.

(5) Strategy: Maintain records of State Ownership.

Target: Protect existing state land title documents and file new documents through filing 100% of existing documents safely retained.

Measure: Number of files updated and retained.

Key Component Challenges

1. **BLM Accelerated Land Conveyance Plan (BLM 2009).** The US Bureau of Land Management (BLM) intends to increase the rate of land transfers to the state starting in 2004, with an ambitious goal of largely fulfilling land transfers to ANCSA Corporations, Native Allottees and the state by 2009. This will significantly increase the workload of the DNR Realty Services Section. The state will need to respond to significantly increased numbers of BLM conveyance decisions, decisions on easements and navigable waters, and requests for reconveyance of Native Allotments. The state will receive significantly more decisions to transfer land to the state and will need to process many more title documents, etc. During the past five years, BLM has transferred to DNR an average of 50,000 acres per year. BLM intends to increase this to as much as 2 to 3 million acres per year, representing a 40-fold increase. For the most part, recent BLM conveyance effort has focused on high value land where there were few competing claims that needed to be resolved. Much of the land that remains is to be transferred are both small and large tracts of high value land that are subject to some type of encumbrance, withdrawal, or competing selection that are more difficult to adjudicate and resolve. Continuing the current method of processing multiple smaller conveyances, it will take more than 60 years to finish the state's remaining entitlements. BLM intends to increase land transfers by increasing its budget, changing its methods of doing business, and through federal legislation. Increased funding is included in BLM's FFY04 budget. Federal legislation, (S. 1466) has been introduced to resolve some of the procedural obstacles and to streamline other aspects of the land transfer process. Funding for the state to participate in this effort is critical to the success of this ambitious conveyance acceleration project. The federal government recognizes this need and has requested funding for the state as part of their total funding request for FFY04 so that the state can increase staff to respond to the anticipated workload of this conveyance acceleration proposal.

2. **Review of Easements under Sec. 17(b) of ANCSA.** The Realty Services section is actively involved in the identification of easements that are reserved in federal conveyances to Native corporations. These easements provide access across private (ANCSA) land to public lands and public waters. There are two potential issues:

(A) Management of 17(b) Easements. These easements are reserved to the United States. The federal Interior Department is pressuring the state to assume management of reserved easements that provide access to state lands and public waters. Management includes identifying the location of the easement on the ground, signing the easement to identify it to the public, explaining the allowed uses to the public, cleaning up trash, maintaining the easement through brushing and fixing muddy spots, maintaining bridges and culverts, and resolving trespass. The state's position is that

the easements are reserved to the United States and it is their responsibility to manage these easements. However, the state recognizes that the number of access disputes the public is experiencing related to this project have been steadily increasing. The department is currently working with the Bureau of Land Management's state office to craft a comprehensive easement management program prototype.

(B) Termination of 17(b) Easements. In Department of Interior regulations 43 CFR 26.50.4-7(a)(13), specify that if an easement has not been used for the purpose for which it has been reserved, the BLM Director shall terminate the easement effective December 18, 2001, unless it provides access to isolated tracts of public lands or public waters. The implementation of this regulation has no statutory basis. Implementation of this regulation will significantly negatively affect public access in Alaska. Several years ago, BLM began a program to review and consider terminating easements using a region-by-region approach. DNR has been an active participant in this process in order to defend these easements. We expect to continue this work in FY 05.

3. **University Land Conveyance.** Conveyance of 250,000 acres of State Land to the University of Alaska to supplement the University's federal land grant is expected to be proposed to the Alaska Legislature. If passed by the Legislature, implementing this grant will be an important challenge for the staff in this component.

4. **The School Trust Lands** valuation and litigation is part of the Title Defense Project. The charge of a Breach of Trust issue is part of a larger litigation issue concerning funding of rural schools filed as *Kasayulie v. State of Alaska* Case No. 3AN-97-3782 CIV. However, Judge Reese has ruled on the plaintiffs' Motion for Partial Summary Judgment on Breach of the School Lands Trust, Judge Reese found two breaches of trust (1) the redesignation of school lands in 1978, and (2) the failure to value school lands in 1978. This case is currently in litigation status. Resolution requires significant staff work, in a manner acceptable to the court.

Significant Changes in Results to be Delivered in FY2005

1. **Accelerated Land Conveyance from BLM (BLM 2009).** If BLM receives funding to accelerate their conveyance process, the Division is expected to receive significant federal funds to work with BLM. If so, we expect that up to 2 to 3 million acres of federal land could be conveyed to Alaska in FY 05. For more information, see description under "Key Component Challenges."

2. **Navigability Disputes.** In FY 05, the Division expects to apply to BLM for approximately Recordable Disclaimers of Interest for 25 to 50 Navigable Waterbodies. For more information, see Navigability and RS 2477 Component.

3. **University Land Conveyance.** The Division expects to be implementing the University Land Conveyance in FY 05. Until a bill is passed by the legislature, the exact method of implementation will not be clear.

Major Component Accomplishments in 2003

The preceding narrative addresses the tasks that Realty Services undertakes on a daily basis. In addition to meeting these basic mission requirements the unit has completed the following noteworthy special assignments in FY 03:

1. Land Transferred into state ownership – in FY 03, the state received 473,625 acres of land from the federal government under its land grants.
2. Land Transferred out of state ownership – in FY 03, DNR issued 457 deeds to transfer 42,597 acres from state to private, municipal, and other ownerships.
3. Colville River. Staff reviewed and edited draft federal conveyance documents, and then accepted title to approximately 15,800 acres of the bed of the Colville River. This acquisition ensured that scheduled Oil and Gas leasing operations could occur on schedule and without ownership conflict.

4. Denali Block. Selections staff reviewed and edited draft federal conveyance documents in order to accept title to approximately 96,000 acres of lands with high mineral extraction potential. This ensured that mineral exploration and extraction operations could occur without ownership conflict while interest in the area is high.
5. Claim to Quiet Title of Submerged Lands within the Tongass National Forest. The state made significant gains in its assertion to ownership of the submerged lands within the Tongass. Special Master Report 128, Original details the concession by the United States that the State of Alaska's claim has merit. The Master has postponed final resolution until the state and the federal government can develop stipulations aimed at identifying the submerged land to which Alaska possesses title.

Statutory and Regulatory Authority

The Title Component operates under the following statutory authority:

Statutory

AS38.04.055

AS38.05.020(b)(8)

AS38.05.030(c) and (d)

AS38.05.035(a)(12)

AS38.05.035(b)(9)

AS38.05.035(e)(6)

AS38.05.127(a)(12)

AS38.50.090

AS38.50.150

AS38.95.210

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**Title Acquisition & Defense
Component Financial Summary**

All dollars shown in thousands

	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	845.3	1,004.7	1,047.5
72000 Travel	5.2	19.2	9.2
73000 Contractual	161.6	125.7	100.7
74000 Supplies	73.4	25.1	25.1
75000 Equipment	0.0	4.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	1,085.5	1,178.7	1,182.5
Funding Sources:			
1004 General Fund Receipts	1,020.2	1,063.1	1,063.1
1007 Inter-Agency Receipts	65.3	115.6	119.4
Funding Totals	1,085.5	1,178.7	1,182.5

Estimated Revenue Collections

Description	Master Revenue Account	FY2003 Actuals	FY2004 Authorized	FY2005 Governor
Unrestricted Revenues				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
Restricted Revenues				
Interagency Receipts	51015	65.3	115.6	119.4
Restricted Total		65.3	115.6	119.4
Total Estimated Revenues		65.3	115.6	119.4

**Summary of Component Budget Changes
From FY2004 Authorized to FY2005 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2004 Authorized	1,063.1	0.0	115.6	1,178.7
Adjustments which will continue current level of service:				
-Changes to Retirement and Other Personal Services Rates	0.0	0.0	3.8	3.8
FY2005 Governor	1,063.1	0.0	119.4	1,182.5

**Title Acquisition & Defense
Personal Services Information**

Authorized Positions		Personal Services Costs		
	FY2004 Authorized	FY2005 Governor		
Full-time	15	15	Annual Salaries	753,136
Part-time	0	0	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	322,212
			<i>Less 2.59% Vacancy Factor</i>	<i>(27,848)</i>
			Lump Sum Premium Pay	0
Totals	15	15	Total Personal Services	1,047,500

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Clerk II	1	0	0	0	1
Natural Resource Mgr II	1	0	0	0	1
Natural Resource Mgr III	1	0	0	0	1
Natural Resource Spec I	4	0	0	0	4
Natural Resource Spec II	4	1	0	0	5
Natural Resource Spec III	2	0	0	0	2
Natural Resource Tech II	1	0	0	0	1
Totals	14	1	0	0	15