

State of Alaska FY2006 Governor's Operating Budget

Department of Natural Resources Title Acquisition & Defense Component Budget Summary

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. These functions are performed by the Realty Services Section of the DNR Division of Mining, Land and Water.

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 fee title or partial interests in other state lands by 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. 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 and 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
A: Acquire, defend, and maintain clear title to the land promised at Statehood. <u>Target #1:</u> Acquire 250,000 additional acres for the state under the Statehood Land Entitlement. <u>Measure #1:</u> Number of acres acquired. <u>Target #2:</u> Defend the state's title to 90 million acres of	A1: Acquire Land <u>Target #1:</u> Acquire 250,000 acre under Statehood Act and other land entitlements. <u>Measure #1:</u> Number of acres acquired. <u>Target #2:</u> Acquire land for public purposes, as donations, etc. through the Other State Lands and similar programs.

previously conveyed land and 60 million acres of tidelands, submerged lands and shorelands.

Measure #2: Percentage of federal ANCSA conveyances and allotments reviewed by DNR.

Measure #2: Acquire up to 5,000 acres under these programs.

A2: Ensure clear title to state land proposed for development by preparing title reports for state land.

Target #1: Provide title reports for 405 parcels of state land proposed for leasing or exploration.

Measure #1: Number of leases/exploration supported by title reports.

Target #2: Provide title reports for 1200 parcels of state land proposed for land sales, land lease, timber sales, and other development activities.

Measure #2: Number of title reports prepared.

A3: 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 #1: Issue Conveyance Documents to 100% of individuals (estimated 650) who have completed their purchase, municipalities once land is surveyed, and other parties.

Measure #1: Number of conveyance documents prepared; backlog of conveyance documents, over 30 days current processing.

A4: Defend State's Title to the land it owns, including land under tidal and navigable waters, and assert public's access rights.

Target #1: Review 100% of BLM conveyance documents affecting state land and ensure that state land and public access issues are adequately dealt with.

Measure #1: Review 1500 Native Allotment actions and 300 BLM ANCSA conveyance and ANCSA Section 17(b) access documents.

A5: Maintain records of State Ownership.

Target #1: Protect existing state land title documents and file new documents through filing 100% of existing documents safely retained.

Measure #1: Number of files maintained.

Major Activities to Advance Strategies

- Review 400 BLM and other decisions regarding land transfers.
- Negotiate conditions included in title documents.
- Accept and record title documents for state.
- 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.
- 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 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

Major Activities to Advance Strategies

land records (approx. 200,000 documents).

FY2006 Resources Allocated to Achieve Results**FY2006 Component Budget: \$1,879,500****Personnel:**

Full time 24

Part time 0

Total 24**Performance Measure Detail****A: Result - Acquire, defend, and maintain clear title to the land promised at Statehood.****Target #1:** Acquire 250,000 additional acres for the state under the Statehood Land Entitlement.**Measure #1:** Number of acres acquired.

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
2002	0	0	0	0	252,451
2003	0	0	0	0	473,625
2004	0	0	0	0	102,695
2005	3,996	0	0	0	0

Analysis of results and challenges: Several large tracts are in progress, including: Pioneer Unit O&G, North Slope Foothills. North Slope Foothills entitlement was complicated by a withdrawal. To date the state has acquired 90,927,870 acres from its entitlement.

Target #2: Defend the state's title to 90 million acres of previously conveyed land and 60 million acres of tidelands, submerged lands and shorelands.

Measure #2: Percentage of federal ANCSA conveyances and allotments reviewed by DNR.

Analysis of results and challenges: FY04 Results

Native Allotments: 1,849 Reviewed, 100% of total

ANCSA Conveyances: 229 Reviewed, 100% of total

FY05 First Quarter Results

Native Allotments: 388 Reviewed, 100% of total

ANCSA Conveyances: 77 Reviewed, 100% of total

Accelerated conveyances related to BLM 2009 Accelerated Land Transfer Act are proportionately increasing review work in the two areas of Native Allotment Program and ANCSA conveyances.

A1: Strategy - Acquire Land

Target #1: Acquire 250,000 acre under Statehood Act and other land entitlements.

Measure #1: Number of acres acquired.

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
2002	0	0	0	0	252,451
2003	0	0	0	0	473,625
2004	0	0	0	0	102,695
2005	3,996	0	0	0	0

Analysis of results and challenges: Several large tracts are in progress, including: Pioneer Unit O&G, North Slope Foothills. North Slope Foothills entitlement was complicated by a withdrawal. To date the state has acquired 90,927,870 acres from its entitlements.

Target #2: Acquire land for public purposes, as donations, etc. through the Other State Lands and similar programs.

Measure #2: Acquire up to 5,000 acres under these programs.

Analysis of results and challenges: FY04 Results

OSL: 1,336 acres

LSH: 59,747 acres

FY05 First Quarter Results

OSL: 20.367 acres

LSH: 0 acres

A2: Strategy - Ensure clear title to state land proposed for development by preparing title reports for state land.

Target #1: Provide title reports for 405 parcels of state land proposed for leasing or exploration.

Measure #1: Number of leases/exploration supported by title reports.

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
2002	0	0	0	0	384
2003	0	0	0	0	146
2004	0	0	0	0	565
2005	114	0	0	0	0

Target #2: Provide title reports for 1200 parcels of state land proposed for land sales, land lease, timber sales, and other development activities.

Measure #2: Number of title reports prepared.

Year	Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD
2002	0	0	0	0	1310
2003	0	0	0	0	556
2004	0	0	0	0	621
2005	163	0	0	0	0

A3: 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 #1: Issue Conveyance Documents to 100% of individuals (estimated 650) who have completed their purchase, municipalities once land is surveyed, and other parties.

Measure #1: Number of conveyance documents prepared; backlog of conveyance documents, over 30 days current processing.

Analysis of results and challenges: FY04 Results

544 Issued

51 Backlog

FY05 First Quarter Results

151 Issued

0 backlog

A4: Strategy - Defend State's Title to the land it owns, including land under tidal and navigable waters, and assert public's access rights.

Target #1: Review 100% of BLM conveyance documents affecting state land and ensure that state land and public access issues are adequately dealt with.

Measure #1: Review 1500 Native Allotment actions and 300 BLM ANCSA conveyance and ANCSA Section 17(b) access documents.

Analysis of results and challenges: FY04 Results

Native Allotment: 1849

17(b): 229

FY05 First Quarter Results

Native Allotment: 388

17(b): 77

A5: Strategy - Maintain records of State Ownership.

Target #1: Protect existing state land title documents and file new documents through filing 100% of existing documents safely retained.

Measure #1: Number of files maintained.

Analysis of results and challenges: 199,253

Key Component Challenges

1. BLM Accelerated Land Conveyance Plan (BLM 2009). The US Bureau of Land Management (BLM) intends to continue to increase the rate of land transfers to the state. The accelerated rate of transfer was initiated in 2004, with an ambitious goal of largely fulfilling land transfers to ANCSA Corporations, Native Allottees and the state by 2009. This has significantly increased the annual workload of the DNR Realty Services Section.

The focus during FY05 has been to review and update the state's priorities for land it wishes to acquire from the federal government, known as the Ownership Priority List (OPL)). Because approximately eight million acres of lands selected by the state are also selected by the ANCSA Corporations, the state must ensure that the final revised OPL reflects several million more acres than the state will actually receive. Some prioritized selections will be rejected for those lands that are ultimately prioritized by the ANCSA Corporations.

In FY05, the state is responding to significantly increased numbers of BLM conveyance decisions, decisions on easements and navigable waters, and requests for reconveyance of Native Allotments. The state will also 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 for transfer to the state is high value land that is subject to some type of encumbrance, withdrawal, or competing selection. These lands are more difficult and time consuming to adjudicate and resolve.

Two key elements of the accelerated land transfer program are changes to federal laws and increased federal funding for Alaska land transfer programs. Federal legislation, (S. 1466), that passed the US Senate and awaits

consideration by the House, would resolve some of the remaining procedural obstacles and would streamline other aspects of the land transfer process. Funding for the state to participate in this effort is also critical to the success of this ambitious conveyance acceleration project. The federal government recognized this need and has agreed to provide funding so that the state can increase staff to respond to the anticipated workload of this conveyance acceleration proposal. Staff increases funded by the federal grant are included in the FY 06 CIP budget.

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 will continue to steadily increase with the BLM 2009 acceleration.

(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. As a result of BLM 2009 federal streamlining measures, the termination review of 17(b) easements has been incorporated into the Easement Nomination process. This allows the state to view the proposed terminations in context with what other easements are being considered within each ANCSA region. However, the state's ability to adequately assess these proposals within the allowable time frames has been severely strained by the number of requests submitted for review simultaneously.

3. Interagency Land Management Acquisitions and Assignments. DNR is the primary state agency with authority to hold title to land needed for state facilities and public purposes. In cases where other agencies need land for facilities, DNR typically holds title to the land but assigns management authority over the land to the requesting agency. Past transactions of this type did not take into account the potential for DNR to receive the lands back with management or environmental contamination problems that would create a significant land management and budgetary burden. In newly created management right transactions, DNR has included conditions and stipulations that severely limit or eliminate the ability of other agencies to return lands in an unacceptable condition.

4. University Land Conveyance. Conveyance of up to 260,000 acres of State Land to the University of Alaska to supplement the University's federal land grant is expected to occur in FY06 as a result of SB7 (passed in 2000) or subsequent legislation. Performing the title research and conveyance of the lands agreed upon by the parties as a result of this legislation will be a significant challenge for the staff in this component in addition to BLM 2009.

5. The School Trust Lands valuation and litigation is part of the Title Defense Project. The charge of a breach of trust is part of a larger litigation concerning funding of rural schools filed as *Kasayulie v. State of Alaska* Case No. 3AN-97-3782 CIV. However, Judge Reese previously ruled on the plaintiffs' Motion for Partial Summary Judgment on Breach of the School Lands Trust, finding 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. Judge Reese retired and the case has been on hold while the state awaits the appointment of the replacement judge in this case. Resolution requires significant staff work, in a manner acceptable to the court.

Significant Changes in Results to be Delivered in FY2006

1. Accelerated Land Conveyance from BLM (BLM 2009). In FY06, the state will be responding to significantly more federal decisions to transfer land to ANCSA Corporations, Native Allottees and the state as BLM accelerates its land transfers. This increased effort will affect all aspects of title acquisition section as well as navigability, submerged lands and upland access title defense issues. The state is working with BLM on procedural modifications that will avoid the conveyance problems of the past and ensure that the state receives clear, surveyed title to as much land as possible between now and 2009. Specific emphasis during FY06 will be on resolving the remaining Native Allotment issues affected existing state ownership, completing the review and reprioritization of the state's comprehensive Ownership Priority List and ensuring public access across the lands conveyed to ANCSA Corporations as their remaining entitlements are finalized. For more information, see description under "Key Component Challenges."

2. Navigability Disputes. In FY06, the Division expects to apply to BLM for Recordable Disclaimers of Interest for approximately 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 FY06. Until a pool of lands is agreed upon between the parties, the exact timing of conveyance will not be clear.

Major Component Accomplishments in 2004

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 FY04:

1. Land Transferred into state ownership – in FY04, the state received 102,695 acres from the federal government under its land grants.
2. Land Transferred out of state ownership – in FY04, DNR issued 554 deeds to transfer approximately 21,737 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 an additional 14,480 acres of the bed of the Colville River. This acquisition ensured that ongoing scheduled Oil and Gas leasing operations could occur on schedule and without ownership conflict.
4. Denali Block II. Selections staff reviewed and edited draft federal conveyance documents in order to accept title to an additional 70,995 acres of lands with high mineral extraction potential. This ensured that mineral exploration and extraction operations could continue to occur without ownership conflict while interest in the area is high.
5. Conveyance Priority Nominations. Selections staff reviewed and submitted request to BLM to transfer to the state several thousand acres to further the state's various economic development priorities. These included additional lands within the Denali Block, the Pioneer oil and gas unit and North Slope Foothills to name a few. In total, the conveyance priority list submitted to BLM in October 2004 requested approximately 765,000 acres of land to be transferred to the state.

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

Contact Information

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Title Acquisition & Defense Component Financial Summary

All dollars shown in thousands

	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	846.7	1,048.7	1,754.5
72000 Travel	1.7	9.2	9.2
73000 Services	112.7	100.7	90.7
74000 Commodities	29.8	25.1	25.1
75000 Capital Outlay	0.0	0.0	0.0
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	990.9	1,183.7	1,879.5
Funding Sources:			
1004 General Fund Receipts	955.2	1,064.3	1,099.5
1007 Inter-Agency Receipts	35.7	119.4	50.0
1061 Capital Improvement Project Receipts	0.0	0.0	730.0
Funding Totals	990.9	1,183.7	1,879.5

Estimated Revenue Collections

Description	Master Revenue Account	FY2004 Actuals	FY2005 Management Plan	FY2006 Governor
<u>Unrestricted Revenues</u>				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
<u>Restricted Revenues</u>				
Interagency Receipts	51015	35.7	119.4	50.0
Capital Improvement Project Receipts	51200	0.0	0.0	730.0
Restricted Total		35.7	119.4	780.0
Total Estimated Revenues		35.7	119.4	780.0

**Summary of Component Budget Changes
From FY2005 Management Plan to FY2006 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2005 Management Plan	1,064.3	0.0	119.4	1,183.7
Adjustments which will continue current level of service:				
-FY 05 Bargaining Unit Contract Terms: GGU	5.3	0.0	3.4	8.7
-FY06 Cost Increases for Bargaining Units and Non-Covered Employees	29.9	0.0	0.0	29.9
Proposed budget decreases:				
-Reduce Uncollectable IA Receipts Authority	0.0	0.0	-72.8	-72.8
Proposed budget increases:				
-Personal Services from BLM 2009 federally-funded capital project	0.0	0.0	730.0	730.0
FY2006 Governor	1,099.5	0.0	780.0	1,879.5

Title Acquisition & Defense Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY2005</u> <u>Management</u> <u>Plan</u>	<u>FY2006</u> <u>Governor</u>		
Full-time	24	24	Annual Salaries	1,229,455
Part-time	0	0	COLA	15,687
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	641,857
			<i>Less 5.01% Vacancy Factor</i>	(94,499)
			Lump Sum Premium Pay	0
Totals	24	24	Total Personal Services	1,792,500

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Clerk III	1	0	0	0	1
Land Surveyor I	1	0	0	0	1
Natural Resource Mgr I	2	0	0	0	2
Natural Resource Mgr II	2	0	0	0	2
Natural Resource Mgr III	2	0	0	0	2
Natural Resource Spec I	5	0	0	0	5
Natural Resource Spec II	6	1	0	0	7
Natural Resource Spec III	2	0	0	0	2
Natural Resource Tech II	2	0	0	0	2
Totals	23	1	0	0	24