

## 9. Property Management

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### 9.1. Introduction

The Property Management Unit manages State-owned ROW and materials sources and carries out the provisions of the Highway Beautification Act of 1965 on areas adjacent to the highway ROW.

Although there are regional differences in designating position titles, for purposes of this manual the term “property management supervisor” refers to the person with supervisory responsibilities over the Property Manager. The term “Property Manager” denotes the ROW Agent who has been assigned property management responsibility.

Unless otherwise specified, all instructions in this chapter refer to the Property Manager.

The property management supervisor must manage the State’s ROW for the greatest long-range public benefit. This includes, but is not limited to, the following:

- maintaining and protecting State-owned improvements;
- clearing each ROW of encroachments for projects;
- renting buildings and lands not immediately needed for construction purposes;
- disposing of improvements by sale or demolition;

- selling excess fee-owned parcels of land not needed for DOT&PF purposes; and
- routinely patrolling each ROW to keep it free of encroachments and in a clean and orderly condition.

Maintain current records of excess real property and adequate fiscal and internal control of all real property, fixtures, and equipment acquired, managed, and disposed of as part of the ROW.

DOT&PF owns a variety of interests in materials sources across the state. If DOT&PF acquires a source in fee simple title, the procedures in Ch. 3-6 apply. If DOT&PF acquires a source from another government agency, the procedures in Sec. 6.15 apply. DOT&PF should only acquire lesser interests after consulting with the Design Project Manager or the Maintenance Superintendent.

The Highway Beautification Act of 1965 requires the control of outdoor advertising and junkyards adjacent to the interstate and primary highway systems ([23 USC 131](#)). These control requirements were reiterated in [AS 19](#) and extended the coverage to secondary highway systems.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) replaced the interstate and primary systems with the National Highway System. For purposes of outdoor advertising and junkyard control, routes classified as interstate and primary as of June 1, 1991 were to retain that designation. State regulations ([17 AAC 20.011](#)) address these changes to Federal law through DOT&PF’s publication *Federal Aid Highways: Interstate, Primary, and Secondary Highways of Alaska* adopted by reference in [17 AAC 20.950](#). Sec. 9.7, 9.8, and 9.9 of this manual cover the property management functions under these laws.

### 9.2. Retention Value Estimates

The Property Management function typically does not commence until after DOT&PF has acquired the ROW for the project. The exception to this is when establishing retention values for improvements within the acquired ROW in case an owner decides to retain the improvements and move them from the ROW.

DOT&PF may allow an owner of improvements, including buildings, fences, sheds, etc., on lands being acquired, to retain those improvements at the discretion of the Regional ROW Chief. Before the ROW Agent's first contact with the property owner, you complete the [Retention Value Estimate Form 25A-R905](#) and have it approved by the Regional ROW Chief.

Compute retention values based on a comparison of what three comparable properties have sold for, if available. These comparables are generally improvements acquired by DOT&PF and later sold and removed. Each region must maintain a [Register of Improvements Sold Form 25A-910](#) from previous projects statewide to aid in establishing retention values.

Compare the improvements to the subject based on the following:

- type of improvement;
- approximate square footage;
- condition of roof;
- condition of siding and interior;
- number of rooms;
- overall condition; and
- ease of moving.

Indicate the sale prices of the three comparable properties, and identify them by their project and parcel numbers if they were acquired and removed from a DOT&PF project.

With each retention value estimate, attach a narrative that explains and analyzes each comparison.

When comparable sales are not available, determine retention value by inspecting and analyzing whether the improvement is movable, and what value it will have on a replacement site, less the cost to move it. Set out the findings in a narrative on Pg. 2 of the [Retention Value Estimate Form 25A-R905](#). The Property Manager and the Property Management Supervisor must sign the form. Submit the form to the Regional ROW Chief. After approval, retain the form in the regional parcel files.

Set one retention value for structures with common walls, such as zero-lot-line units. No retention values

are necessary on fixtures and equipment unless the property owner specifically requests retention.

To assure removal of improvements as specified in an MOA with the property owner, DOT&PF must withhold a minimum of \$500 from the purchase price paid to the owner until removal is accomplished. If an increased or decreased withholding amount is warranted, estimate removal cost if DOT&PF is required to remove it.

Make these retention values the first entry on the [Property Management Project Status Report Form 25A-R915](#) described in Sec. 9.3.2.

### **9.3. Inventory and Control of Improvements**

For each negotiated parcel with improvements, the Regional ROW Chief must give the Property Manager a copy of the executed MOA. The Pre-Audit Section asks the Finance Section to mail a warrant to the property owner, with a return receipt requested to the Pre-Audit Section.

When the Pre-Audit Section receives the certified return receipt, they must notify the Property Manager of the payment receipt date. This date establishes the beginning of the rent-free period for the owner-occupant and begins the Property Manager's responsibilities for the property.

On improved parcels in condemnation, the Regional ROW Chief must secure Orders of Possession from the Department of Law and furnish a copy to the Property Manager.

When the Property Manager becomes responsible for a building improvement, ascertain the actual or tentative letting date of the related construction contract. This date is the primary determining factor as to whether to rent the property for the interim period before actual construction or whether to dispose of it by sale or demolition.

#### **9.3.1. Assignment and Disposition of Improvements**

Enter the acquired improvements on the [Assignment and Disposition of Improvements Form 25A-R690](#) as soon as that form and the executed MOA are received from the Acquisition Agent (Sec. 6.8.3). The form provides an itemized listing of each acquired improvement and fixture as listed in the appraisal or as purchased by administrative settlement (Sections 4.6, 4.15.3, and 6.8.3). Include all items

such as stoves, refrigerators, drapes, etc. Record the disposition of each acquired improvement and the inspection date.

Total the parcel's property management credits and expenses for accounting purposes.

Obtain authorization for payments pending removal of improvements using this form instead of a written memorandum. After disposition, sign the form, give it to the Pre-Audit Section for payment, if applicable, and file it in the parcel file.

### **9.3.2. Property Management Project Status Report**

The [Property Management Project Status Report Form 25A-R915](#) is required for each project with property management responsibilities. Use it as a quick reference tool and keep it up to date. When the project is cleared of all improvements, file it with the project files for historical purposes.

### **9.3.3. Inspection of Occupied Premises**

Within two weeks after acquisition of the property, all improvements shall be inspected. The physical presence and condition of the structures, fixtures, and equipment are a primary concern. Coordinate with the Relocation Agent to determine the owner's or occupant's plans to vacate the property, and making arrangements for final inspection and physical possession by DOT&PF.

### **9.3.4. Owner's Agreement to Vacate Occupied Premises**

Possession of the premises is controlled by the terms of the MOA or by court order (in condemnation proceedings) granting right of possession to the State. While the MOA speaks for itself, the terms and conditions in a condemnation suit are not always spelled out in the order granting right of possession. Monitor condemnation suits involving improvements and maintain a liaison with the Department of Law attorney who is prosecuting the suit to determine not only when right of possession is granted but also upon what terms and conditions the right of possession is granted.

Normal procedure is to allow an owner-occupant to continue to live in the premises, rent free for 30 days after receipt of payment for the property. However, DOT&PF does not extend this rent-free courtesy to tenants. Where the property is not immediately

required for construction purposes, it may be beneficial to rent it. (Sec. 9.6.1)

### **9.3.5. Final Inspection and Taking of Possession**

On the date of the agreed vacation of the property, make a final inspection and take physical possession. Use the [Check-In/Out Inspection Form 25A-R920](#) for this inspection. Do the following:

- determine that all fixtures and equipment acquired by DOT&PF remain on the property;
- report discrepancies in writing to the Regional ROW Chief; and
- recommend in writing the feasible disposition of all improvements to the Regional ROW Chief.

Disconnect all utility facilities that would not endanger the value of the structure.

Post a sign stating that the property is owned by the State of Alaska and that the State will prosecute any person trespassing, stripping or vandalizing the property. Padlock and secure the premises, if necessary, as a protection against vandalism. Alert police and request that they keep watch.

### **9.4. Disposition of Improvements**

If conditions do not warrant short-term rental as discussed in Sec. 9.6.1, determine whether the improvements should be advertised for sale or demolition by sealed bid or auction, or included in the general construction contract (Sec. 9.5.3).

Make the appropriate entry on the [Assignment and Disposition of Improvements Form 25A-R690](#) and the [Property Management Project Status Report Form 25A-R915](#).

#### **9.4.1. Legal Notice**

If DOT&PF will sell the improvements, publish a notice of the sale property in accordance with DOT&PF regulations [17 AAC 10](#).

As shown on [Specifications and Award for the Sale and Removal of Structures \(Form 25A-R925\)](#) and [Specifications and Award for Demolition of Structures \(Form 25A-R930\)](#) the notice must state the following:

- location and description of buildings and improvements offered for sale;

- date, time, and place of bid opening;
- specifications unique to the sale;
- DOT&PF reserves the right to reject any and all bids;
- bids must be accompanied by a performance security deposit;
- DOT&PF must receive payment before giving possession;
- DOT&PF can award demolition contracts only to a licensed contractor; and
- bidding on buildings to be moved is open to all; however only a licensed general contractor experienced in moving structures may move the building over public thoroughfares.

#### 9.4.2. Performance Security

All bids must be accompanied by a performance security deposit in the form of a U.S. postal money order, cashier's check, or certified check, made payable to the State of Alaska. The deposit must be sufficient to reasonably assure completion of the contract and must be a minimum of \$5,000. Set the deposit at a different amount if appropriate. Support this in writing and obtain approval of the Regional ROW Chief. DOT&PF returns the successful bidder's deposit when the contract is properly complete. "Performance security deposits" are returned to unsuccessful bidders.

#### 9.4.3. Bid Proposal

When preparing the notice, prepare enough of the following bid proposal forms to provide copies to the expected number of bidders:

1. Invitation for Bid (Structures to be Sold and Removed).
2. Invitation for Bid (Demolition of Structure).
3. [Specifications and Award for Sale and Removal of Structures Form 25A-R925](#).
4. [Specifications and Award for Demolition of Structures Form 25A-R930](#).

Give bidders every opportunity to inspect the property being sold. Become familiar with the property to be able to intelligently answer all inquiries from the bidders. Pay special attention to any specifications peculiar to a given sale.

## 9.5. Bid Openings

The Regional Contract Section must receive and open all bids and must take the following actions:

- record all bids and notify all bidders of the status of their bid upon acceptance of the successful bid;
- return unsuccessful bidders' deposits; and
- after each bid sale, complete the [Register of Improvements Sold \(25A-910\)](#) and distribute it to the other regional offices.

### 9.5.1. Successful Bidders

The Regional ROW Chief must provide the name and address of the successful bidder or bid contractor, and the [Demolition Contract Form 25A-R935](#) approved and signed by the procurement officer. DOT&PF must retain the performance security deposit until the terms of the contract are fulfilled.

Contact the successful bidder to arrange payment of the full amount of the purchase price. After payment has been received, send the buyer a [Bill of Sale Form 25A-R940](#), executed by the regional director to authorize removal of the property from the ROW. Handle revenue received in accordance with Sec. 9.10.7.

Ensure that all buildings sold by DOT&PF as dwelling units meet the conditions of [AS 34.03.100](#) and contain working smoke and carbon monoxide detection devices installed in accordance with [AS 18.70.095](#) before the agreement is consummated. Request the demolition contractor sign the contract. The contract must include appendices that contain the requirements set out in Appendix A of (US)DOT Order 1050.2A (Ex. 9-1).

Continue to observe the property and report, either by use of the [Assignment and Disposition of Improvements Form 25A-R690](#) or by memorandum, to the Regional ROW Chief if and when the structures in question have been satisfactorily removed or demolished from the ROW in accordance with the specifications.

If the improvements are not removed or demolished on the agreed date, notify the Regional ROW Chief at once so that proper legal steps may be taken to effect compliance.

The performance deposit is refunded to the purchaser when the Property Manager certifies, either with the

[Assignment and Disposition of Improvements Form 25A-R690](#) or by memorandum, to the Regional ROW Chief that the ROW has been satisfactorily cleared.

### **9.5.2. Noncompliance of Contract**

If the terms of the contract have not been complied with and the bid item remains on the ROW, stripped of salvage, arrange for the item to be removed by DOT&PF and the deposit credited to the general fund or to the receive and expend account if authorized. Include the removal in the general contract and credit the deposit to the project, if appropriate.

### **9.5.3. Improvements Cleared by General Contractor**

It may be in DOT&PF's best interest to have the items to be removed included in the general contract for the construction of the project. This method usually is adopted to clear the ROW of miscellaneous fences, boardwalks, platforms, wells, etc. It should be used if cost effective and if the improvements do not present a health hazard. Advise the Design Section of improvements to be included in the general contract specifications.

## **9.6. Use of Highway Right of Way by Others**

There are three situations where property belonging to the State may be used by others:

- rental of property during the short term between the date of acquisition and the date of project construction;
- permitted encroachment; and
- other permitted uses, such as driveways and utilities.

### **9.6.1. Rental Procedures**

Real property acquired by the State may be rented to the current occupants between acquisition of the property and clearing of the improvements. If the construction schedule permits a substantial delay in the clearing of improvements, DOT&PF may rent the property to short-term subsequent occupants. Rent improvements, when feasible, to provide a monetary return and serve as a measure of protection against vandalism.

Ensure that all buildings rented by DOT&PF as dwelling units meet the requirements of [AS 34.03.100](#)

and contain working smoke and carbon monoxide detection devices installed in accordance with [AS 18.70.095](#) before the agreement is consummated.

### **Fair Market Rental Determination**

Determine the amount of fair rental of the property using the [Fair Market Rental Determination Form 25A-R945](#). Determine the fair rental value by using comparable rentals in the area, adjusted to reflect the conditions of the rental agreement, including short-term occupancy. In adjusting the rental figure, consider the fact that DOT&PF will assume no responsibility for utilities or for fire insurance, other than what is provided in the State's blanket insurance coverage.

In some cases, it may be necessary for DOT&PF to pay utilities, such as for multifamily structures. Reflect this in the rental rate. Submit the [Fair Market Rental Determination Form 25A-R945](#) to the Regional ROW Chief for approval. If comparable rental rates are not readily determined, set the monthly rent at 0.7% (seven-tenths of one percent) of the market sale value.

### **Rental Agreement**

After the Regional ROW Chief approves the fair rental value, prepare the [Rental Agreement \(Residential\) Form 25A-R950](#) or [Rental Agreement \(Business\) Form 25A-R951](#) in duplicate. The prospective tenant must complete an [Application for Month-to-Month Rental Agreement Form 25A-R955](#).

If the tenant is not a displaced person from the project, they must also complete the [Addendum to month-to-month Rental Agreement Form 25A-R956](#), acknowledging they are not displaced and not entitled to benefits.

Assign a control number to each rental agreement. Contact the tenant and arrange to accompany them in completing the [Check-In/Out Inspection Form 25A-R920](#). After the inspection, the tenant must sign the rental agreement.

Rent payments must be made in U.S. funds, with checks payable to the State of Alaska preferred. Arrange for the deposit to be credited to the general fund or to the receive and expend account if authorized. Submit rent payments to the regional Property Management Unit for coding and submission to the Finance Section. Whenever possible, provide pre-addressed envelopes.

If payment is not received within 10 days of the due date, the Property Management Unit is to contact the tenants about paying rent.

After approval by the Regional ROW Chief, send a fully executed rental agreement to the tenant and retain one to file in the appropriate parcel file.

### **Revenue Coding for Rental/Lease Agreements**

Code revenue from rental/lease agreements for property purchased solely with State funding to each region's "receive and expend" fund source.

For Federally-funded projects, code the revenue from rental/lease agreements to an unrestricted revenue account.

Return the Federal share of the income to the original Federal-aid project when the Federal project is closed out by Statewide Project Control.

If the project has been closed by FHWA and CIP Management and Finance, code the revenue to the "receive and expend" fund source and a designated program receipt account, showing that the revenue is used only for [Title 23](#) projects as prescribed in Sec. 2.9.7.

### **Default or Breach of Rental Agreement**

The Finance Section will notify the Property Manager of any default. Refer defaults or breaches of agreements to the Department of Law after all avenues of relief have been exhausted as set out in the Rental Agreement or other document.

#### **9.6.2. Encroachments**

Encroachments are defined under [AS 19.25.200](#) (a). The regulations in [17 AAC 10](#) sets out the requirements for obtaining an encroachment permit.

Any non-highway use within the ROW, except for a mailbox or a newspaper box attached to a mailbox, is considered to be an encroachment. The encroachment should be removed or should be covered under a permit. Application requirements are set out in the "Request for Encroachment Permit" portion of this section.

The Regional ROW Chief may be made aware of the location and nature of the suspected encroachment. The Regional ROW Chief will assign a ROW Agent (Property Manager) to determine if the suspected encroachment is within the ROW, who the owner is, and whether an encroachment permit has been issued.

If it is an unpermitted encroachment, send the owner an Unpermitted Encroachment Notice Letter.

An encroachment permit is issued using either the short form, [Encroachment Permit \(Short Form\) Form 25A-R965](#), or the long form, [Encroachment Permit \(Long Form\) Form 25A-R966](#). The majority of permits use the short form. Use the long form when mitigating issues may make a short form inappropriate, such as environmental issues.

When an encroachment permit is issued, record the pertinent information on the Encroachment Permit Log. This log will be permanently maintained in the region's ROW files.

When required by the Stewardship & Oversight Agreement, obtain FHWA approval for encroachments allowed under [17 AAC 10.011](#). Under [17 AAC 10.012](#), DOT&PF may grant an encroachment permit (that includes any conditions imposed under [17 AAC 10.014](#)) after determining that the following standards are met:

- integrity and safety of the highway is not compromised;
- encroachment will not cause a break in access control for the highway;
- land will not be necessary for a highway construction project during the initial term of the permit; and
- issuing the permit is in the State's best interest.

In addition to meeting the standards listed above, the proposed use must be consistent with the continued operation, maintenance, and safety of the highway and must not expose highway users or others to any hazards [[23 CFR 710.403](#) (b)].

Use restrictions for encroachment permits are set out in [17 AAC 10](#). Additionally, the applicant may not possess illegal signs, driveways, or other unpermitted ROW activities. Storage of flammable, explosive, or hazardous material is prohibited within the permit area.

Code revenue as provided in the section entitled "Revenue Coding for Encroachment Permits" below.

### **Encroachment Permits at No Cost for Government Agencies Not Acting in a Business Capacity**

Encroachment permits may be issued at no cost for local, State, and Federal agencies that are not acting in

a business capacity. Permitted uses include flags of states or nations, decorative banners, and signs, without logos or names of sponsors that are intended to inform motorists that they are entering a municipality, community, or state.

The agency requesting a permit under this provision must sign an indemnification clause in the permit to hold DOT&PF harmless. DOT&PF may deny a permit if it would cause a safety risk for the traveling public

Application for a permit under this section is made using the [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#) or the [Application for Encroachment Permit for Encroachment in Existence on or Before January 1, 2005 Form 25A-R961](#), as applicable. Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use either the [Encroachment Permit \[Short Form\] Form 25A-R965](#) or the [Encroachment Permit \[Long Form\] Form 25A-R966](#), as applicable.

### **Encroachment Permits for Owners or Lessees of Land Contiguous to Right of Way (Including Government Agencies Acting in a Business Capacity)**

Encroachment permits may be issued for owners or lessees of land contiguous to the ROW, including government agencies acting in a business capacity. An encroachment permit described in this section may be issued for any lawful use, with these exceptions:

1. Any permanent structure located partially or completely in the ROW.
2. A new water and sewer facility that is not permitted under a utilities permit ([17 AAC 15](#)).
3. A tank of any size.
4. Fueling facilities.
5. A use that is not in the State’s best interest.
6. A land use on a ROW that allows development on contiguous land that would not otherwise be possible without the use of the ROW.

The land area described in the encroachment permit may not be used to meet minimum requirements for a contiguous land use under applicable municipal land use standards or under regulations adopted by the Department of Environmental Conservation (DEC). The contiguous land use must meet those minimum

requirements without regard to the land contained within the encroachment permit. The use of the land described in the encroachment permit must be an accessory use to the contiguous land use.

A permit issued under this regulation requires a \$100 nonrefundable application fee and an annual fee. The permit is valid for no more than 5 years but may be renewed at DOT&PF’s discretion. The annual fee for the permit is based upon economic rent or is \$100, whichever is greater. The nonrefundable reapplication fee is \$100. Other provisions regarding renewal and revocation are set out in [17 AAC 10](#), while [17 AAC 10.013](#) sets out the method for establishing economic rent.

[17 AAC 10](#) allows an encroachment permit of a defined period of time for an existing structure or portion of a structure, or for an existing water or sewer facility that has not been issued a utility permit under [17 AAC 15](#) if the following standards are met:

- The encroachment does not present a risk to the health or safety of the public
- The construction of the encroachment occurred in good faith
- The denial of the permit would create a hardship for the owner of the encroachment

Use either the [Encroachment Permit \(Short Form\) Form 25A-R965](#) or the [Encroachment Permit \(Long Form\) Form 25A-R966](#), as applicable.

### **Beautification Encroachment Permits**

The department may issue at no cost a beautification permit to allow planting of trees, shrubs, grasses, or flowers that do not endanger those in the highway right of way.

Application for a beautification permit is made using the [Application/Renewal for Beautification Encroachment Permit Form 25A-R962](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Encroachment Permits for Commemorative Plaques, Historical or Interpretive Markers, and Informational Signs**

The department may issue an encroachment permit at no cost to a government agency for the installation in highway rest stops or pullouts of commemorative

plaques, historical or interpretive markers, and informational signs. The plaques, markers, and signs may be permitted only if they cannot be read from the highway.

Application for a permit under this section is made using the [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Encroachment Permits for Advertising on Bus Benches, Bus Shelters, and Adjacent Trash Receptacles**

An encroachment permit is required for advertising on bus benches, bus shelters, and adjacent trash receptacles under [17 AAC 20.005](#). (See [AS 19.25.105](#) (d)(1), which requires a permit issued under [AS 19.25.200](#), encroachment permits.) A request for proposal process is required to select a permittee ([17 AAC 20.005](#) (c)). A permit may be issued at no cost to a nonprofit corporation under [17 AAC 20.005](#) (e).

Application for a permit described in this section is made using the [Application/Renewal for Encroachment Permit for Advertising on Bus Benches, Bus Shelters, Trash Receptacles Form 25A-R964](#). Application requirements are set out in the “Request for Encroachment Permit” portion of this section. Use the [Encroachment Permit \[Short Form\] Form 25A-R965](#) to issue the permit.

### **Request for Encroachment Permit**

A request for an encroachment permit or for the renewal of such an encroachment permit, must include the fee, if any, required by [17 AAC 10](#), or by [AS 19.25.200](#) (d) for an encroachment in existence on or before January 1, 2005, as applicable. The initial request must also be accompanied by an [Application/Renewal for Encroachment Permit \(General\) Form 25A-R960](#), an [Application for Encroachment Permit for Encroachment in Existence on or Before January 1, 2005 Form 25A-R961](#), an [Application/Renewal for Beautification Encroachment Permit Form 25A-R962](#), or an [Application/Renewal for Encroachment Permit for Advertising on Bus Benches, Bus Shelters, Trash Receptacles Form 25A-R964](#).

For a general encroachment permit, the Regional ROW Chief may require the applicant to furnish

drawings stamped by a professional engineer registered in Alaska.

Upon receipt of a request, the Regional ROW Chief will assign the request to a ROW Agent who will be responsible for processing the application.

The agent first determines whether the encroachment was in existence on or before January 1, 2005, or is a new encroachment. If the encroachment existed on or before January 1, 2005, in addition to determining whether the encroachment meets the standards in Sec. 9.6.2, the agent must also determine whether (1) the applicant has demonstrated that the encroachment was erected with the good faith belief that it was lawful to erect and maintain the encroachment in its location and (2) denial of the encroachment permit would pose a hardship on the applicant.

If the agent determines that the encroachment fails to meet any applicable standard, the agent will sign a statement to that effect and attach it to the application and notify the applicant.

If the agent determines that the encroachment meets all applicable standards, the agent will circulate the request to pertinent regional sections for comments. After receiving comments from the reviewers, the agent will complete the [Encroachment Permit Processing Checklist Form 25A-R957](#) and attach it to the region’s copy of the permit application, together with [Encroachment/Beautification Permit Comment Sheet Form 25A-R968](#). A permit issued under this section will use either the [Encroachment Permit \[Short Form\] Form 25A-R965](#) or the [Encroachment Permit \(Long Form 25A-R966](#), as applicable.

The term of a permit, including any renewal, may not exceed the limits set in [17 AAC 10](#) provided that a permittee under that subsection must pay a fee based upon economic rent established under [17 AAC 10.013](#), or \$100 annually, whichever is greater, for use of the land.

[17 AAC 10.013](#) provides: “For purposes of [17 AAC 10](#), the department will establish economic rent for a right of way held in fee simple by the use of commonly accepted real estate appraisal techniques. For rights of way held as easements, the consideration for the issuance of the permit is 90% of the economic rent established under this section for a right of way held in fee simple. A permittee shall reimburse the department for appraisal costs incurred to determine economic rent.”



### **Public Notice of Proposed Encroachment Permit**

If the issuance of an encroachment permit might be controversial, or if DOT&PF determines that public notice would be beneficial to the adjudication process, issue a public notice as explained in Sec. 9.4.1. The applicant is responsible for the cost of this notice.

### **Expiration or Revocation of Encroachment Permit**

DOT&PF may revoke an encroachment permit as provided in [17 AAC 10](#). When a permit expires or is revoked, the permittee is responsible for the cost of removing improvements unless the permit provides otherwise (see [17 AAC 10.015](#)).

If an encroachment is destroyed, the associated encroachment permit is extinguished. Any subsequent encroachment would require a new application.

### **Request for Federal Highway Administration Approval**

Any use of Federal-aid highway ROW other than the rental described in Sec. 9.6.1 must be approved by FHWA, unless otherwise noted by the Stewardship and Oversight Agreement. The Regional ROW Chief sends the request for approval to the FHWA Division Office. It must include the following information, using the [Encroachment/Beautification Permit FHWA Checklist Form 25A-R967](#):

1. An indication as to whether the encroachment was in existence on or before January 1, 2005, or is a new encroachment.
2. A copy of the letter and application requesting use of ROW.
3. A project plan showing the Federal-aid project number and/or other map locating the proposed areas.
4. A scale drawing of the proposed activity and/or pictures of the area.
5. The distance the permitted area will be from the traveled way.
6. If the activity includes a supporting structure, information regarding whether the clear zone and site distance were considered.
7. Zoning information (if applicable), including a brief description of the allowed uses for the adjacent property.
8. An analysis of why the permitted activities must be in the ROW, rather than on adjacent property.

9. An analysis of why the encroachment permit should be granted rather than reducing the ROW.
10. A copy of the comments received from circulating the request to the various DOT&PF sections,.
11. A copy of the agent's findings regarding the application ([Encroachment Permit Processing Checklist Form 25A-R957](#)).
12. Pertinent correspondence between the applicant and DOT&PF.
13. A copy of the draft permit, containing the Federal-aid project number, that has been signed or that has the written concurrence of the regional environmental analyst.
14. A copy of the public notice advertisement, if applicable.
15. Any additional pertinent information available.

### **Revenue Coding for Encroachment Permits**

Encroachment permit fees are collected under the Statutory Designated Program Receipts OMB Fund Code 1108 - Statutory Designated Program Receipts ([AS 37.05.146](#) (b)(3)). These funds are appropriated by the legislature for highway-related activities within the ROW Section. The Statutory Designated Program Receipts revenue is receive and expend authority for each region to meet property management responsibilities.

Code the revenues to the accounts shown below. Expenses for highway-related activities are offset by revenues. Expenditures and revenues related to these activities are collected by the Statewide Right-of-Way Chief and submitted periodically to FHWA. Authorized activities include management of highway-related activities such as appraisals, negotiations, and management of permits and lease agreements.

See Sec. 2.9.7 for procedures for revenue from land acquired with Federal funding, showing that the funding is used for [Title 23](#) projects.

See regional Pre-Audit staff for revenue coding.

### **9.6.3. Other Permitted Uses**

#### **Driveways and Approach Roads**

If a person wants to place a driveway or approach road within the State ROW, the law requires that person to obtain a permit from DOT&PF under [17 AAC 10](#), after submitting the [Application to](#)

[Construct and Maintain a Driveway or an Approach Road on Highway Right of Way Form 25A-R969](#). The person must submit the application to the regional office, which issues the permit, if appropriate. A [Permit to Construct and Maintain a Driveway or an Approach Road on Highway Right of Way Form 25A-R970](#) allows the construction, continued presence, and maintenance of the driveway within the ROW. (See Sec. 1190 of the *Alaska Pre-Construction Manual*.)

DOT&PF may grant approval of an existing non-permitted driveway or approach road encountered during a construction project by issuing a permit or by depicting it on a construction as-built plan, if the driveway or approach road meets current standards. If it does not meet those standards, notify the property owner of the need to bring the driveway or approach road up to standards and to apply for a permit under [17 AAC 10](#). A property owner who wants to change an existing driveway or approach road must obtain a permit under [17 AAC 10](#).

Applicants must provide traffic control in accordance with the directions on DOT&PF's driveway permit Web site: <http://dot.alaska.gov/permits/index.shtml>.

Instructions for coding revenue from permit fees can be found in Sec. 9.6.2, "Revenue Coding for Encroachment Permits."

### Temporary Uses of Right of Way

Encroachment permits for temporary use of the ROW include:

Highway Events Permits -- issued under [17 AAC 20.015](#) for events such as a race, athletic contest, or similar event that require use of a highway ROW. Use [Highway Event Application Form 25A-R971](#). The permit is issued using [Highway Event Permit Form 25A-R972](#).

Lane Closure Permits -- issued under [17 AAC 20.017](#) for access to, or construction and maintenance activities related to, physically contiguous land during the construction, alteration, or maintenance of improvements, or to allow access to utility facilities for which a permit has been issued under [17 AAC 15](#). Use [Lane Closure Application Form 25A-R973](#). The permit is issued using [Lane Closure Permit Form 25A-R974](#).

Special Use Permits - issued for activities that require entering onto a highway ROW for a temporary, short-term period, but that do not require lane closure, such

as geotechnical investigations, monitoring wells, tree clearing or other activity not related to State projects outside the clear zone. Use [Application for Temporary Construction Permit Form 25A-R975](#) and [Temporary Construction Permit Form \(Property Management\) Form 25A-R976](#).

### Utilities and Mailboxes

Utility permits are issued under [17 AAC 15.011](#). Mail and newspaper boxes within the ROW are not considered encroachments, but must be installed according to current U.S. Post Office and DOT&PF design standards.

## 9.7. Highway Signs for the Traveling Public

Alaska law dealing with highway signs for the traveling public, including outdoor advertising, is set out in [AS 19](#), [17 AAC 20](#), and in [17 AAC 60](#).

In Alaska, outdoor advertising is very restricted. The only signs that are permitted in the ROW and along the traveled way are the following:

- those described in the statutes, regulations, and documents adopted by reference in the regulations, including the *Alaska Traffic Manual*; and
- those approved by the State Traffic Engineer - these signs are not considered outdoor advertising.

The authority listed below for issuing sign permits resides in the ROW section in each regional office. Application forms must be completed, signed and submitted to the appropriate regional DOT&PF office by mail, fax or in person at (<http://www.dot.state.ak.us/stwddes/permits/>). FHWA approval is not required.

Regulatory information is available regarding the following:

- Memorial Sign Program at [17 AAC 08.005](#) - [17 AAC 08.055](#);
- Tourist-oriented Directional Sign Program at [17 AAC 60.001](#) - [17 AAC 60.020](#);
- Logo Sign Program at [17 AAC 60.101](#) - [17 AAC 60.120](#);
- Recreational and Cultural Interest Area Sign Program at [17 AAC 60.201](#) - [17 AAC 60.215](#);

- Traveler Information Kiosk Program at [17 AAC 60.401 - 17 AAC 60.420](#);
- standards for manufacture, installation, maintenance, and removal of signs at [17 AAC 60.905](#);
- requirements regarding sign contractors at [17 AAC 60.910](#);
- designs and specifications for tourist signs at [17 AAC 60.915](#);
- symbols at [17 AAC 60.920](#);
- sign permit duration and renewal at [17 AAC 60.925](#);
- permits for existing signs at [17 AAC 60.930](#);
- permit transfers at [17 AAC 60.935](#);
- one sign permit per activity at [17 AAC 60.940](#);
- more restrictive local controls at [17 AAC 60.945](#);
- standards for signs relating to gas, food, lodging, and camping activities at [17 AAC 60.950](#);
- sign permit issuance and sign relocation at [17 AAC 60.955](#);
- two signs per permit at [17 AAC 60.957](#);
- violations at [17 AAC 60.960](#);
- definitions used in the regulations at [17 AAC 60.995](#).

### 9.7.1. General Eligibility Requirements for Businesses

The general eligibility requirements for placement of signs and sign design standards are contained in referenced statutes and regulations and in the *Alaska Traffic Manual* [which consists of the Manual of Uniform Traffic Control Devices (MUTCD) and the Alaska Supplement to the MUTCD (ATM)]. To be eligible, a business must be in compliance with all applicable Federal, State, and local laws. Fees and other requirements for signs are set out in 17 AAC 60 (see list of specific regulations above) and the statutes underlying those regulations.

### Disapproved Applications

The applicant may appeal the denial of a permit in accordance with [17 AAC 10.950](#). If DOT&PF denies an application for a specific reason that is considered

correctable with modification, the Regional ROW Chief will advise the applicant of the necessary modifications.

## 9.8. Outdoor Advertising Control

The statutes dealing with outdoor advertising are set out at [AS 19](#), and the regulations are set out at [17 AAC 20](#). The statutes prohibit all outdoor advertising that is within 660 feet of the nearest edge of the ROW and that is visible from the main-traveled way of an interstate, primary, or secondary highway, except as otherwise provided in [AS 19.25.105](#) (Sec. 9.1). Except for information posted on traveler information kiosks this prohibition also applies to highway rest stops and pullouts on the State highway system.

Regulatory information is available regarding the following:

- management of permissible outdoor advertising at [17 AAC 20.005](#) (including signs advertising an event or activity, signs advertising the sale or lease of a site, and advertising on bus benches, bus shelters, and adjacent trash receptacles);
- highway designation at [17 AAC 20.011](#);
- removal of outdoor advertising located in highway rights of way at [17 AAC 20.012](#); and
- removal of outdoor advertising located outside highway rights of way at [17 AAC 20.013](#).

### 9.8.1. Outdoor Advertising Control

Outdoor advertising along the interstate, primary, and secondary routes must be controlled. (See Sec. 9.1.) Effective control is accomplished as follows:

- conduct a periodic inspection of all routes to ensure an updated inventory;
- maintain ongoing surveillance by ROW personnel, with the cooperation of maintenance personnel;
- implement an illegal sign removal program; and
- prepare a report on signs.

### 9.8.2. Removal of Illegal Signs

All illegal signs are subject to prompt removal. Except as provided in [17 AAC 20.012](#), when a sign is determined to be illegal, the regional office must give notice to the owner as required by [AS 19.25.150](#). In

addition, DOT&PF recommends personal contact with the owner, in company with the maintenance station foreman, as necessary, to explain why the sign is illegal.

If the sign is not removed by the owner within 30 days, DOT&PF may remove it and bill the owner for costs incurred as authorized under [AS 19](#) and [17 AAC 20.012](#) and [17 AAC 20.013](#). Removal operations will be coordinated, as necessary, with the regional maintenance superintendent.

If removed by DOT&PF, the signs must be stored at the nearest maintenance station for 30 days and then disposed of. Property management personnel must affix the date of removal to the sign in a nondestructive manner. The owner may reclaim the sign within the 30 days upon payment of removal and storage costs.

## 9.9. Junkyard Control

Junkyards (see [23 CFR 751.7](#)) located within 1,000 feet of the nearest edge of the ROW of interstate, primary, or secondary highways (see Sec. 9.1) are illegal except as otherwise provided in AS 19. Effective control is accomplished as follows:

- conduct a periodic inspection of all routes to ensure an updated inventory;
- maintain ongoing surveillance by ROW personnel, with the cooperation of maintenance personnel;
- implement an illegal junkyard removal or screening program; and
- prepare reports on junkyards, using the [Junkyard Control Report Form 25A-R990](#).

### 9.9.1. Inventory

The Property Management Unit must make a complete inventory of all illegal junkyards and keep it current. For each junkyard appearing on the inventory, a completed [Junkyard Control Report Form 25A-R990](#) must be on file in the appropriate regional office.

### 9.9.2. Junkyard Screening

Screening, as required by AS 19, means the use of any vegetative planting, fencing, ornamental wall of masonry, or other architectural treatment, earthen embankment, or a combination of these that renders

invisible any deposit of junk from the main traveled way.

After the screen is established, the junk must not be stacked high enough to be visible above the screen. No junk may be placed outside of the screened areas.

The screening must be located on the owner's land and not on any part of the highway ROW. Screening must be located so it is not hazardous to the traveling public.

The construction of screening must be uniform, not a patchwork type of construction. Acceptable fencing materials for screening include fences of steel or other metals, durable woods, or other woods treated with a preservative or walls of masonry.

Screening must be painted where the composition is such that painting is required. The paint used must be of a color that blends into the environs of the highway ROW.

Screening must be designed and constructed to withstand adverse wind pressures. It must have gates that are kept closed except for ingress and egress of moving vehicles, or gateways that screen the junk and operation from the highway user at all times.

Acceptable planting materials for screening include shrubs, trees, flowering plants, and foliage. Plant material is subject to the following standards:

- should be native to the area and long lived;
- should provide for landscaping that is relatively maintenance free;
- can provide a living screen that may be used in conjunction with a fence or wall; and
- must be watered, cultivated, or mulched and given any required maintenance including spraying for insect control, to keep the planting material healthy.

The owner must remove dead plant material immediately and replace it during the next spring or fall planting season. The replacement plants must be at least as large as the initial planting.

The owner may consider earthen embankments for screening such as berms or mounds. After grading, the owner must landscape the area to maintain a natural environmental appearance.

Embankments may be used in conjunction with fences and plant materials.

## 9.10. Excess Land Management and Disposal

The procedure for a land interest disposal depends upon the authority by which it was created. In terms of Federal highway rights of way, a disposal means the sale of real property or rights therein; including access or air rights, when no longer needed for highway right of way or other uses eligible for funding under [Title 23 of the United States Code](#).

[[23 CFR 710.105](#) (b)] Federal & State Statutes and regulations governing disposals of land interests are set out in:

- interests acquired under Title 2 - Aeronautics: [AS 02.15.070](#). Acquisition and disposal of property (see Ch. 10);
- interests acquired under Title 19 - Highways and Ferries authority: [AS 19.05.070](#). Vacating and disposing of land and rights in land; [17 AAC 10.100](#) – [17 AAC 10.130](#) Land Disposal;
- highway rights of way established under Public Land Orders, '47 Act patent reservation and easements by prescription: [AS 19.05.070](#). Vacating and disposing of land and rights in land; [17 AAC 10.100](#) – [17 AAC 10.130](#) Land Disposal;
- interests acquired under Title 35 - Public Works authority: [AS 35.20.070](#) Vacating of Land or Rights in Land;
- interests acquired under Titles 14 and 35 for Schools: [AS 14.08.151](#) (b) - Upon request the responsible department shall convey title to the regional school board;
- interests acquired from the Department of Natural Resources (DNR) under [AS 38.05.030](#) (b) "...shall be returned to the management of the division of lands...";
- interests acquired with [Title 23 USC](#) funds: [23 CFR 710.409](#);
- rights of way dedicated under [43 USC 932](#) (RS 2477 Trails, repealed) - [AS 19.30.410](#) Vacation of rights of way; [11 AAC 51.065](#) Vacation of Easements;
- section-line easements dedicated under [43 USC 932](#) or [AS 19.10.010](#); [AS 19.30.010](#) ("If the highway is vacated..."); [11 AAC 51.065](#) Vacation of Easements;
- rights of way dedicated under Title 29 - Municipal Government: [AS 29.40.160](#). Title to vacated area and municipal government platting ordinances;
- rights of way dedicated under [Title 38](#) - Public Land: [11 AAC 51.065](#) Vacation of Easements;
- rights of way dedicated under [Title 40](#) - Subdivisions and Dedications (DNR platting authority in unorganized borough): [11 AAC 51.065](#) Vacation of Easements;
- other State-owned public access easements managed by DNR: [11 AAC 51.065](#) Vacation of Easements;
- changes or disposal (break) of an Access Control line requires FHWA approval according to the Stewardship and Oversight Agreement; and
- transfer of operating ROW (Relinquishment): A relinquishment is defined as the conveyance of a portion of a highway ROW or facility by a State highway agency (SHA) to another Government agency for transportation use. [[23 CFR 710.105](#) (b)] While ownership changes, the land interest remains a highway ROW. A relinquishment is subject to the terms of [23 CFR 620.201-23 CFR 620.203](#) and FHWA approval and/or concurrence according to the Stewardship and Oversight Agreement.

Some excess lands shall be transferred to DNR under [AS 41.21.020](#) (a) when appropriate as park and public recreation lands (see Sec. 9.10.4.)

The land disposal regulations at [17 AAC 10](#) were established to deal with the disposal of "highway" rights of way and do not apply to land interests acquired under [Title 2](#), [Title 35](#), RS 2477 trail easements, section line easements, statutory or common law dedications by plat and others.

In certain circumstances where rights of way are layered (i.e. right of way by Public Land Order and plat dedication) the disposal process may require more than one procedure. (i.e. [Commissioner's Deed of Vacation Form 25A-R997](#) and a platting action).

If the land interest is in fee, it must be conveyed to

another party using a [Commissioner's Quitclaim Deed Form 25A-R996](#). If the land interest is an easement, the [Commissioner's Deed of Vacation Form 25A-R997](#) releases the easement returning the unencumbered use of the land to the fee owner.

### Public Notice

Sec. VIII of the [Alaska Constitution](#) requires public notice before the disposal of State-owned land or an interest in State land. Lands returned to DNR do not require public notice as the lands are not leaving State ownership however, public notice in these cases might be warranted if the disposal may be controversial.

### Reversion, Abandonment, Non-use and Municipal Authority

A public easement or less than fee right of way cannot be terminated by apparent abandonment or non-use. An affirmative act, in the form of a [Commissioner's Deed of Vacation Form 25A-R997](#) or [Commissioner's Quitclaim Deed Form 25A-R996](#) is required to release the interest.

A municipal platting authority may not vacate DOT&PF managed rights of ways over the objection of DOT&PF.

- reversions to DNR and Municipality Entitlements under [AS 38.05.030](#);
- disposal of erroneously acquired real property under [17 AAC 05.020](#);
- land disposal at [17 AAC 10](#);
- disposal by negotiated sale to an adjoining property owner at [17 AAC 10.105](#);
- disposal by competitive sale at [17 AAC 10](#);
- disposal through brokers at [17 AAC 10](#);
- land exchanges at [17 AAC 10](#);
- conveyance documents at [17 AAC 10](#);
- land outside of right-of-way limits at [17 AAC 10](#);
- appeals at [17 AAC 10](#); and
- definitions used in the regulations at [17 AAC 10](#).

#### 9.10.1. Inventory and Control

If property is excess, complete the [Property Management Land Inventory Form 25A-R995](#). Maintain appropriate land inventory records.

Make periodic inspections throughout the region to determine if any of these properties are excess property that should be disposed of under Sec. 9.10.4. If an inspection reveals that any property is illegally occupied, notify the occupant that they must vacate the property or apply for an encroachment permit.

#### 9.10.2. Requests for Disposal

When a request for the disposal of excess property is received, the ROW Agent should request the applicant to submit an [Application for Disposal of State Land and Relinquishment of Land Interests Form 25A-R992](#). When the completed application is received, the Property Manager will start a [Checklist for Processing Excess Property Disposal Applications Form 25A-R993](#) and use the form throughout the process.

#### 9.10.3. Determination of Need

Before disposal of any property, consult the various sections within the region (Design, Planning, Maintenance, etc.) to ascertain if there is any foreseeable need for the property. If so, consider permitting the non-DOT&PF use of the land rather than disposing of the property. If there is likely to be any adverse effect, permitting may not be allowed.

Consider for permitted uses only those lands that are to be used by DOT&PF in the foreseeable future. Consider all other excess lands for disposal as promptly as possible in accordance with [17 AAC 10.100 - 17 AAC 10.130](#).

#### 9.10.4. Methods of Disposal

If land or rights in land are excess to DOT&PF's needs, the Regional ROW Chief must determine whether the land has a potential use for parks, conservation, recreation, or a related purpose. If it does, the Regional ROW Chief will notify each appropriate Federal, State, and local agency and the Regional and Statewide Environmental Sections. If no agencies are interested in developing the land for parks, etc., DOT&PF may dispose of the land by one of the following methods, some of which have additional regulatory requirements:

- if the land is being sold, prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#);
- if an easement was acquired and the rights are being vacated, prepare a [Commissioner's Deed of Vacation \(Form 25A-R 997\)](#);

- if the property was acquired through inadvertence or mistake, depending on the type of title acquired, prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#) or a [Commissioner's Deed of Vacation Form 25A-R 997](#);
- if the land was acquired from DNR or another State agency by Interagency Land Management Assignment (ILMA), prepare a [Commissioner's Quitclaim Deed Form 25A-R996](#) (this formalizes the transfer and requires a comprehensive review process);
- if the land was acquired from a Federal agency with a reversionary clause, request the appropriate means of transferring the property back to the Federal agency; and
- if a section of roadway is being transferred to a municipality for continued use as a transportation facility, prepare a [Commissioner's Deed of Relinquishment Form 25A -R999](#). See Sec. 9.10.9 of this manual regarding road transfers.

#### **9.10.5. Request for Authority to Appraise and Dispose of Excess Property**

Prepare the disposal for the Regional ROW Chief's signature. The Regional ROW Chief then requests authority to appraise and dispose of the excess land by memorandum to the Regional Director, accompanied by the [Excess Property Certification Form 25A-R998](#).

If Federal funds participated in the original purchase, direct the request through the director to the Federal agency involved, unless FHWA is the agency. If FHWA is the funding agency, an informational copy of the DOT&PF approval should be sent to the FHWA Division Administrator (see Stewardship and Oversight Agreement).

#### **9.10.6. Disposal of Controlled Access**

Controlled Access (or access control) is a property right considered part of the highway ROW, and it must be disposed of in the same manner as any other property right. If a portion of any access control on a Federal-aid highway is to be disposed of, ensure compliance with the Stewardship & Oversight Agreement and obtain any required FHWA approval.

#### **9.10.7. Sale of Structures and Excess Land on a Federal-Aid Highway Project**

Receipts from the sale or rents of excess property obtained with Federal-aid funding must be used for transportation purposes. Arrange for the deposit

credited to the general fund or to the receive and expend account if authorized.

#### **Revenue Coding for the Sale**

Code revenue from the sale of structures, excess land, or a combination of both to the designated program receipts if the structure or land was purchased with State funds.

Code revenue to designated program receipts if the structure or land was purchased with Federal highway funds and the highway project is closed. Sec. 2.9.7 has coding instructions for these projects, including showing that revenues were used for [Title 23](#) projects.

If the sale occurs while the Federal project is still open, code the revenue to the Federal project collocation code and ledger code and unrestricted revenue account.

For FAA projects, the Federal participating share of the sale *must* be returned to the original project if the project is still open.

FAA has agreed to allow Federally-eligible participating expenditures (actually belonging to closed projects) to be coded to currently active Federal projects with the same participating rate/ratio.

See regional Pre-Audit staff for revenue coding.

#### **9.10.8. Appeals**

No appeal is available if DOT&PF determines that a parcel of ROW is not excess and is not available for disposal.

#### **9.10.9. Road Transfers**

Road transfers occur when DOT&PF and another government agency agree that it is mutually beneficial to formally transfer ownership and control for a road or section of road from DOT&PF to that agency. A Memorandum of Understanding (MOU) formalizing the transfer is entered into between the two agencies, setting out the conditions and responsibilities of each party necessary to affect the transfer. The MOU also sets out the design life of the latest construction project for local, rural minor collectors, or TRAAK (Trails and Recreational Access for Alaska) projects.

## **9.11. Materials Sources**

The Property Management Unit should maintain a complete inventory of all materials sources within the region in which DOT&PF has any ownership interest. The inventory should include at least the following:

- name or number;
- location;
- type of interest held;
- restrictions on use;
- time limits on use;
- reversionary requirements; and
- size.

## **9.12. Civil Rights Statements for Deeds and Leases**

Include the following clauses in Ex. 9-2, 9-3, and 9-4 in all deeds and relinquishments entered into by the State of Alaska pursuant to provisions of the Civil Rights Act of 1964.



## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

A

### Exhibit 9-1 Appendix A of DOT Order 1050.2A dated April 11, 2013

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the (Title of Recipient) will accept title to the lands and maintain the project constructed thereon in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Name of Appropriate Program), and the policies and procedures prescribed by the (Title of Modal Operating Administration) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Title of Recipient) all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Title of Recipient) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (Title of Recipient), its successors and assigns.

The (Title of Recipient), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (Title of Recipient) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

B

### Exhibit 9-2 Appendix B of DOT Order 1050.2A dated April 11, 2013

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (Title of Recipient) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, (Title of Recipient) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (Title of Recipient) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (Title of Recipient) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

C

### Exhibit 9-3 Appendix C of DOT Order 1050.2A dated April 11, 2013

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by *(Title of Recipient)* pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, *(Title of Recipient)* will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, *(Title of Recipient)* will there upon revert to and vest in and become the absolute property of *(Title of Recipient)* and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

D

#### Exhibit 9-4

Appendix D of DOT Order 1050.2A dated April 11, 2013