

11 AAC 67

Article 8

Land Exchanges

11 AAC 67.200. Purpose. 11 AAC 67.200 - 11 AAC 67.280 establish procedures for the disposal of state land or interests in state land by exchange as authorized by AS 38.50.010 - 38.50.170.

11 AAC 67.210. Initiation of exchange. (a) A proposed exchange of state land or interests in state land must be initiated by written application to the department by a qualified party to an exchange, as defined by AS 38.50.030.

(b) An application must be accompanied by written proof acceptable to the department that the applicant is the owner of, or is legally entitled to, the land or interests in land proposed for exchange, or that the applicant is authorized to act on behalf of the owner of the land or interests in land proposed for exchange.

(c) An application must describe the perceived public benefits to be derived from the proposed exchange.

(d) The department will respond in writing to an application made under this section within 60 days after its receipt. The response will indicate whether the department determines that it is in the public interest to negotiate a preliminary exchange agreement under 11 AAC 67.230.

11 AAC 67.220. State land or interests in state land subject to exchange. (a) The state will, in its discretion, exchange land or interests in state land if

(1) the exchange is not inconsistent with a land use plan adopted or amended under AS 38.04.065; and

(2) the land is classified under 11 AAC 55 and the classification is

(A) agricultural, commercial, industrial, private recreation, reserved use, residential, or utility if classified before September 7, 1983; or

(B) agricultural, reserved use, or settlement, if classified after September 6, 1983.

(b) Nothing in this section requires classification or prohibits reclassification under 11 AAC 55 of state land or interests in state land proposed for exchange.

(c) Only agricultural interests may be exchanged on land classified agricultural under 11 AAC 55.

11 AAC 67.230. Preliminary exchange agreement. (a) If, under 11 AAC 67.210, the department determines it is in the public interest to pursue the proposed land exchange, the department and the party, or parties, will enter into a preliminary exchange agreement which

(1) accurately identifies the land or interests in land, whether surface or subsurface estate, or both, proposed for exchange by each party;

(2) describes the benefits to be derived by the parties as a result of the exchange;

(3) summarizes each party's responsibilities for conducting the appraisals required by 11 AAC 67.240 and specifies the instructions for the appraisals;

(4) contains a proposed timetable for completion of the various stages of the exchange, including the proposed dates for appraisal submission, public notice, hearing, preparation of final exchange agreement, and execution of the exchange;

(5) indicates all costs including, but not limited to, those of any necessary survey and advertising, to be paid by each party to an exchange;

(6) indicates land survey responsibilities, if any;

(7) describes any known improvements constructed on the land proposed to be exchanged;

(8) commits each party to examine the land or interests in land proposed to be exchanged and to identify any known unauthorized entries; and

(9) states that no party may create new third-party interests in the land proposed for exchange until after the exchange is executed, unless otherwise agreed to by all parties to the exchange.

(b) Upon entering into a preliminary exchange agreement under this section, the department will initiate procedures to close the state land proposed for exchange to mineral entry and location under AS 38.05.185.

(c) A preliminary exchange agreement entered into under this section segregates the affected state land or interests in state land from future actions which may result in the creation of third-party interests. Necessary state land title record notations will be made under 11 AAC 53.010 - 11 AAC 53.050 to assure that this section is properly implemented.

11 AAC 67.240. Appraisal. (a) Land or interests in land included in the preliminary exchange agreement must be appraised by a qualified land appraiser acceptable to each party to the proposed exchange.

(b) Each party to the proposed exchange shall pay the cost of appraising the land or interests in land each offers for exchange, unless otherwise agreed by all participating parties.

(c) All parties to the proposed exchange shall review each appraisal upon completion. If a party to the proposed exchange disputes another's appraisal, that party may obtain an appraisal at its own expense, to be completed within a period agreed to by the parties. If the parties do not agree to the values specified in either appraisal, a final appraisal must be obtained from an appraiser acceptable to the parties to the proposed exchange within a period agreed to by the parties, with the cost of the final appraisal shared equally by the parties. If a final appraisal is prepared under this section, it must be used in the final exchange agreement.

(d) For the purposes of this section, AS 38.05.840, and AS 38.50.020(b), a state appraisal is not completed until it is approved by the department. An appraisal completed by a party to an exchange is completed on the date the appraisal is approved by the other party.

11 AAC 67.250. Public hearing. (a) A public hearing held under AS 38.50.120 will be conducted by the department in person or by teleconference before the execution of the proposed exchange.

(b) The notice prepared under AS 38.50.110 will

(1) state the manner in which the department will conduct the public hearing, if one is scheduled; or

(2) provide an opportunity to request a public hearing, if one is not scheduled.

(c) The department will, in its discretion, conduct a public hearing upon receipt of a request made under (b)(2) of this section.

11 AAC 67.260. Final exchange agreement. (a) After all requirements of AS 38.50 and 11 AAC 67.200 - 11 AAC 67.280 have been met, and before the exchange is executed, a final exchange agreement must be entered into by all parties to an exchange.

(b) A final exchange agreement must contain all terms, conditions, and considerations of the proposed exchange, including

(1) final descriptions of the land or interests in the land proposed to be exchanged;

(2) an identification of the instruments by which ownership of the land or interests in land was obtained;

(3) an identification of any taxes and assessments owed on the property and third-party interests including, but not limited to, liens, claims, encumbrances, easements, rights-of-way, leases, reservations, covenants, and other agreements that affect the land to be exchanged, including a declaration of the extent to which these obligations will be discharged or interests extinguished before the proposed exchange is executed;

(4) a detailed accounting of the amount of money or other consideration, if any, to be paid to, or offered by, any party to the proposed exchange to equalize the values of the land or interests in land proposed for exchange; and

(5) the easements, reservations, or other title encumbrances, if any, to be reserved in the final conveyance documents.

(6) Repealed 12/27/2012.

(c) For the purposes of this section and AS 38.50.140, the appraised fair market values of the land or interests in land proposed for exchange may be equalized by:

(1) full cash payment at the time of the execution of the proposed exchange; or

(2) subtracting from the appraised fair market value of the land or interests in land that a party to the exchange proposes to exchange, the value of that portion of the land or interests in land being given to the state as a donation.

(d) In no case may the value of cash equalization made by any party to the exchange under (c)(1) of this section, or a donation made by a party to the exchange under (c)(2) of this section, exceed 25 percent of the appraised fair market value of the state land or interests in state land proposed for exchange.

11 AAC 67.270. Title insurance. The department will, in its discretion, require that the title the state receives be insured, with the state as the named insured, by a title insurance company licensed to do business in Alaska. The department will, in its discretion, accept a title insurance policy with exceptions to complete vesting of title in the owner of the property. The cost of title insurance, unless otherwise agreed, must be paid by the party offering the land or interests in land.

11 AAC 67.280. Execution of exchange. (a) No exchange may be executed sooner than 30 days after the date the final exchange agreement is signed. The department will convey land or interests in land by patent or quitclaim deed. Other parties to the exchange shall convey land or interests in land by patent, quitclaim deed, or general warranty deed.

(b) A deed executed by an individual grantor must disclose the marital status of the grantor. The spouse of a married grantor must join in the execution of the deed.

(c) A patent or deed executed by a corporation must state that the deed is executed in accordance with a resolution or order by the corporation's board of directors or other governing body. A copy of the resolution or order must accompany the patent or deed, and both must bear the corporate seal.

(d) No special conditions or limitations may be imposed in a final conveyance document unless previously agreed to in writing in the final exchange agreement entered into under 11 AAC 67.260, or unless required by law.