

Reasons for the Repeal Sections from AS 38.50

The general purpose of repealing language within these sections is to replace procedures for land exchanges with federal agencies, Native corporations, and private entities with ones that allow for exchanges to be conducted efficiently, similar to other disposals of interest decisions conducted by DNR. These land exchanges will now fall under the standard public notice and decision process requirements of the Alaska Lands Act (AS 38.05.945 and AS 38.05.035(e)) that are currently used for most state land disposals, including oil and gas leasing and land sales. Therefore, some sections regarding public notice and decision process that deviate from AS 38.05.945 and AS 38.05.035(e) are repealed.

38.50.020 Value of properties exchanged. The majority of this section was retained under AS 38.50.010, except the requirement that the state must receive land that is equal to or exceeds the appraised fair market value of the land exchanged by the state. The unintended consequence of this requirement, along with some other provisions of AS 38.50, has created challenges to complete exchanges when considering other values of public benefit that will not be able to be appraised. This problem is fixed by using the procedures similar to those used for municipal land exchanges, which require the state to receive land with approximate equal value of the land it is exchanging. Repealing the old requirement will allow the state to evaluate the value of the property together with other public benefits to ensure that the land and value received by the state equals or exceeds the value of the property relinquished.

38.50.040 Land subject to exchange. This section does not appear to have any functional use. Regardless of this statutory provision, the state does not have the legal authority to violate a covenant or restriction on title that prevents a disposal or land exchange.

38.50.080(b) Prohibition against alienation of selection rights. The state has already selected land under the Alaska Statehood Act and has no further ability to select lands, therefore this subsection is no longer applicable.

38.50.090 Coordination with other state agencies. For consistency, this is replaced with the requirements under AS 38.05.035(e) which includes a requirement to provide a summary of agency and public comment obtained as a result of contacts with other agencies and efforts taken by the department to solicit public response.

38.50.100 Finding requirement as to alternatives. This is replaced with the process described under AS 38.05.035(e) which requires a written determination that the exchange will best serve the interests of the state.

38.50.110 Notice of proposed exchange. This notice section is replaced with the requirements of AS 38.05.945, which is the standard for most other disposals, including oil and gas leases, land sales, material sales, and other leases. AS 38.50.110 contains different language from AS 38.05.945, in that it requires that the notice to contain all of the pertinent information regarding the land exchange, which has the effect of requiring publication of a very lengthy public notice. AS 38.05.945 allows supporting materials to be provided along with the notice that accomplish this same purpose.

38.50.120(b) Public hearings. Modifications to AS 38.50.120(a) changed public hearings to public meetings. Typically DNR holds public meetings instead of formal hearings. Therefore subsection (b) is no longer necessary to clarify hearing procedures.

38.50.130 Report on proposed exchange. This reporting requirement is duplicative of existing requirements for publication of a best interest finding, and it adds cost and complexity to the exchange process. The best interest decision will lay out the considerations used in determining the value of the properties, the value of the exchange and what the benefits are of the exchange.