



Fact Sheet: Preference Right Conveyances of State Land

A preference right is a right to obtain title to state land without providing the same opportunity to all Alaskans. The Department of Natural Resources is prevented from making private, non-competitive, or negotiated land sales, except under preference right statutes. DNR has separate statutory preference right provisions that either allow or mandate the state to give individuals or groups priority in purchasing state land. Some statutes contain provisions that mandate the preference right to grant land to qualified applicants; others are discretionary. This fact sheet addresses preference rights under the authority of Alaska Statute (AS) 38.05.035(b)(2), AS 38.05.035(b)(3), AS 38.05.035(b)(5), AS 38.05.035(b)(7), AS 38.05.035(f), AS 38.05.068, and AS 38.05.102. Other statutes, e.g., AS 38.05.810 and AS 38.05.870, apply to additional preference right authority and are the subject of separate fact sheets.

Do I qualify for a preference right land sale?

If any of the following situations apply to you, you may qualify for a preference right conveyance of state land.

Was there an error or omission(s) of a state or federal agency when inequitable detriment would otherwise result to a diligent claimant or applicant due to a situation over which the claimant or applicant had no control?

AS 38.05.035(b)(2) applications must be filed within three years of the error or omission, the date the State received title to the land or the date of a court decision or settlement which nullified the disposal of the land.

Did you make improvements to state or federal land acquired by the State and, in good faith, sought to obtain title, but an error or omission of others prevented you from obtaining title to the land?

The error or omission of a predecessor in interest or an agent, administrator, or executor that has clearly prejudiced the claimant may be the basis for granting a preference right. A preference right application under AS 38.05.035(b)(3) must be submitted within three years of the error or omission, the date of acquisition of the state land, or the date of a court decision or settlement nullifying a disposal of state land. The claimant may finance or purchase the land at the fair market value on the date of original entry or a price determined by the director to fairly represent the value of unimproved land at the time the claim was established, but in no event less than the cost of administration, including survey.

Were there improvements made on land before statehood (January 3, 1959)?

AS 38.05.035(b)(5) allows the person or the heirs or devisees of a person who can show bona fide improvement to state land prior to statehood, to purchase the parcel (up to five acres) if it is determined that an injustice to the applicant will result otherwise. The applicant may purchase the land for the fair market value on the established date of entry.

Are you an adjoining landowner of state land which is considered unmanageable or was created by a highway right-of-way alignment or realignment, or where the State vacated a right-of-way?

AS 38.05.035(b)(7) allows the State to convey to an adjoining landowner for its fair market value a remnant of land that the director considers unmanageable, a parcel that was created by the alignment or realignment of a highway right-of-way, or a parcel of land that was a right-of-way which the State has vacated. The parcel shall not exceed the minimum lot size under the applicable zoning code or must be smaller than 20 acres and completely enclosed by property owned by the adjacent landowner.

Do you have a building for business purposes on state land that was transferred from the federal government and was permitted by the federal government for at least five years?

AS 38.05.035(f) allows the State to sell up to five acres of land to an individual who erected a building and used the land for bona fide business purposes for five or more years. This must have been under a federal permit or without the need for a federal permit and then under a State permit or lease after the State selects the land. Additionally, the business must have used the land to produce at least 25% of its total income for the five years preceding the application to purchase. The applicant may purchase the land at a price determined by the director to represent the fair market value

of the unimproved land but not less than the administration cost, including the survey. If the director determines that the land purchase would interfere with public use, the director may impose conditions to mitigate adverse effects or reject the application.

Are you a Forest Service permittee on land that is tentatively approved for state patent?

AS 38.05.068 allows Forest Service permittees or lessees under AS 38.05.087 to purchase the land tentatively approved for state patent, so long as the Forest Service Permit was in effect on the day before tentative approval occurs. The director shall offer the land for sale to the permittee or successor in title of the permittee.

Do you have a long-term lease?

Alaska Statute (AS) 38.05.102 allows a long-term leaseholder in good standing to purchase the leased land for its appraised fair market value. The lease must have been created under the authority of AS 38.05.070 - 38.05.105.

How do I apply?

You can obtain information and submit a preference right application form to the Department of Natural Resources, Division of Mining, Land and Water (DMLW), Land Conveyance Section (LCS), whose address is provided below. You are required to submit:

- A preference right application;
- An agreement to bear costs;
- An environmental risk questionnaire;
- A non-refundable application fee; and
- Any other documentation supporting your qualifications for your application under the selected statute.

What costs are associated with a preference right conveyance?

Applicants who wish to purchase state land under one of the preference right statutes must meet specific financial obligations to complete the purchase successfully. These requirements, set forth in statute and regulation, are described below:

- Application fee that is non-refundable and non-transferable.
- Survey costs, if required, include survey instructions, plat review, cost of survey, and any fees charged by the local platting authority.
- Fair Market Value appraisal.
- Purchase Price.

What happens after I apply?

There are several steps in completing a preference right conveyance of state land. Once an application is received and deemed complete, the DMLW Realty Services Section conducts title research. LCS distributes your application to agency review participants for a review period and the opportunity to submit comments. Then, a Preliminary Decision is written, which includes responses to agency comments. As required by AS 38.05.945, a minimum 30-day public notice is conducted to allow the public to submit written comments on the Preliminary Decision. After the public notice period ends, a Final Finding and Decision is issued, which includes responses to any public comments received during the public notice period. When the Final Finding and Decision is issued, there is a 20-day appeal period during which the applicant and those who submitted written comments during the public notice period may appeal the decision. If no appeal is received, the Final Finding and Decision becomes effective on the 31st day after issuance. After the Final Finding and Decision becomes effective, the applicant must submit the required deliverables, such as a survey and appraisal, before entering into a land sale contract, financing the sale with the department, or paying off the parcel and being issued a patent.

For additional information contact:

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