

## 2014 Statutes Land Leasing

### Article 03. LEASING OF LAND OTHER THAN FOR THE EXTRACTION OF NATURAL RESOURCES

**Sec. 38.05.070. Generally.** (a) Land, including tide, submerged, or shoreland, to which the state holds title or to which it may become entitled, may be leased, except for the extraction of natural resources, in the manner provided in [AS 38.05.070](#) - 38.05.105.

(b) The director, with the approval of the commissioner, shall determine the land to be leased and the limitations, conditions, and terms of the lease. The director shall preserve reasonable and traditional access to state land and water. If the appraised value of the transaction is \$10,000 a year or less, the director may negotiate a lease for a period not to exceed 10 years, and on the limitations, conditions, and terms that the director considers are in the best interests of the state. A lease negotiated under this subsection is not eligible for a preference under [AS 38.05.102](#).

(c) A lease may be issued for a period up to 55 years, if the commissioner determines it to be in the best interests of the state. The commissioner shall consider the useful life of any improvements proposed and approved under [AS 38.05.075](#) in determining the term of the lease. If the commissioner determines that the land or a part of it which is the subject of a grazing lease is not being used for the purpose issued, the lease may be declared void.

(d) If, after notice under [AS 38.05.945](#) soliciting interest for a competitive auction, the department determines that only one potential bidder has expressed interest in bidding, the director may cancel the competitive auction and negotiate a lease and its conditions and terms that the director determines to be in the best interests of the state.

(e) The director may renew a lease issued under this section, [AS 38.05.075](#), or 38.05.810 upon its expiration if the lease is in good standing and the lease renewal is determined to be in the best interests of the state. A renewal issued under this subsection is not subject to [AS 38.05.035](#)(e). A lease may be renewed only once for a term not longer than the initial term of the lease. The director shall provide notice of the lease renewal decision.

**Sec. 38.05.073. Recreational facilities development leasing.** (a) To identify land suitable for recreational facilities development leasing, the commissioner shall make the identification through a regional land use plan or a site-specific land use plan adopted under [AS 38.04.065](#). The identification of land for leasing under this section shall be consistent with any existing regional recreational management plan. The commissioner may request proposals from potential lessees under this section if consistent with an adopted land use plan that expressly allows the specific type of

development under consideration. Consistent with [AS 38.04.065](#), the development of a land use plan used to identify land suitable for recreational facilities development leasing must consider the supply of recreational opportunities and alternatives, economic and social factors, and fish, wildlife, and other resources affected by the specific type and location of recreational facilities development under consideration.

(b) [AS 38.05.070](#)(a), 38.05.085(c), 38.05.090, and 38.05.103 apply to leasing under this section. The other provisions of [AS 38.05.070](#) - 38.05.105 do not apply to leasing under this section.

(c) If the commissioner identifies land for recreational facilities development leasing under (a) of this section, at least 30 days before the commissioner decides to solicit proposals from potential lessees, the commissioner shall provide public notice of the location and the specific type of recreational facilities development being considered and request comments. The notice shall be provided to (1) a municipality if the land is entirely or partially within the boundaries of the municipality; (2) a regional corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) if the boundaries of the corporation established by 43 U.S.C. 1606(a) encompass part or all of the land and the land encompassed by the corporation's boundaries is entirely or partially outside the municipality; (3) a village corporation organized under 43 U.S.C. 1601 if all or part of the land is within 40 miles of the village for which the corporation was established and the land is located entirely or partially outside a municipality; (4) other persons affected by the specific recreational facility development; and (5) persons who have specifically requested to be notified. Public notice identifying the location and the specific type of recreational facilities development under consideration must also be published at least twice in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located. The comments received under this subsection become part of the public record for the consideration of the commissioner.

(d) If the commissioner decides to solicit proposals, the commissioner shall prepare a written request for proposals that includes

(1) the specific type of recreational facilities development for which the land may be leased;

(2) the form of compensation that the commissioner intends to require for the lease under (1) of this subsection;

(3) the selection criteria that the commissioner will use to determine the eligibility of a developer, including the developer's financial backing and capability, experience in the proposed undertaking, ability to meet bonding or insurance requirements, and ability to comply with resource and environmental analysis requirements; and

(4) the criteria that the commissioner will use to determine the suitability of proposals.

(e) After preparing a request for proposals under (d) of this section, the commissioner may issue the request to solicit proposals from persons who are interested in leasing the land for recreational facilities development. The request for proposals must be advertised at least three times in a newspaper of general circulation in the state and in a local newspaper in general circulation in the region where the land is located. The proposals submitted to the commissioner must include the specific facts on which the potential lessee bases its ability to develop the land, including its ability to comply with the items identified in (d)(1) - (4) of this section.

(f) After soliciting proposals under (e) of this section, if the commissioner determines that only one potential lessee is acceptable, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(g) After soliciting proposals under (e) of this section, if the commissioner determines that two or more potential lessees are acceptable, the commissioner may select the potential lessee who submits the highest bid during a public auction or by sealed bids, whichever method the commissioner chooses. The minimum bid must equal the amount established by the commissioner plus the administrative fee established under (k) of this section. The commissioner shall also require the potential lessee to make an earnest money deposit under [AS 38.05.860](#)(b). After the commissioner selects a potential lessee, the commissioner may begin negotiations with the potential lessee to develop the terms and conditions for the lease.

(h) After developing proposed lease terms and conditions with a potential lessee under (f), (g), or (j) of this section, the commissioner may issue a preliminary decision under [AS 38.05.035](#)(e) that leasing the land to the potential lessee on the proposed terms and conditions serves the best interests of the state. During preparation of the preliminary decision, the commissioner shall consult with affected state agencies regarding issues within the agencies' areas of responsibility and expertise. The commissioner shall give public notice of the preliminary decision under [AS 38.05.945](#) and request comments from the public and state agencies. A public hearing shall be held in the region where the land proposed for lease is located if the commissioner determines there is sufficient local interest. The preliminary decision must include

- (1) a statement of the specific type of recreational facilities development for which the land will be leased;
- (2) an analysis of alternative sites;
- (3) a statement of the terms and conditions to be required in the proposed lease agreement;
- (4) a statement of the compensation that the state may require under the proposed lease agreement;
- (5) a statement of the potential economic, social, and environmental effects of the proposed development, including the effect on water quality

and the traditional and recreational uses of the land;

(6) a statement of the long-term commitments of fish, wildlife, and other natural resources that would be involved in the proposed development;

(7) a statement of alternatives to the commitments identified under (6) of this subsection and alternatives or measures that may reduce or eliminate the effects identified under (5) of this subsection;

(8) an identification of any studies, including economic feasibility studies, or plans to be required by the commissioner; and

(9) for a large project, a preliminary assessment of the project's economic feasibility based on available information.

(i) After reviewing the comments received under (h) of this section, the commissioner shall make a final determination whether the proposed lease will serve the best interests of the state. If the commissioner determines that the proposed lease will serve the best interests of the state, the commissioner shall offer the lease to the proposed lessee subject to the terms, conditions, and study requirements the commissioner determines to be necessary. If a study or plan is required, the potential lessee may be required to provide and pay for the study or plan. For a large project where the commissioner has determined under (h) of this section that there may be significant economic, social, or environmental effects or long-term commitments of fish, wildlife, or other natural resources, the commissioner shall require the potential lessee to prepare and submit a comprehensive economic feasibility study to be completed no later than 18 months after the execution of the lease. State agencies with pertinent expertise or responsibilities shall be involved in the review of required plans and studies. If the plan or study involves fish, game, or customary and traditional use of natural resources, the Department of Fish and Game shall review the methodology and scope of the plan or study. If the Department of Fish and Game determines that the methodology and scope are appropriate for the plan or study, the methodology and scope may be used for the plan or study.

(j) If a potential lessee who was selected under (g) of this section declines the lease offer made under (i) of this section, the commissioner may begin negotiations with the potential lessee who provided the next highest bid under (g) of this section to develop under (g) of this section the terms and conditions for a lease.

(k) The commissioner shall require the potential lessee awarded the right to negotiate a lease under (f), (g), or (j) of this section to pay a nonrefundable administrative fee of at least \$250.

(l) The commissioner shall reject all proposals or bids for a lease when it is in the best interest of the state.

(m) The compensation to be paid to the state for a lease issued under this section may include, in the discretion of the commissioner,

(1) a percentage of the annual gross receipts as reported to the United States Internal Revenue Service;

(2) a guaranteed annual minimum rent or a percentage of gross receipts, whichever is greater;

(3) the fair market rental value;

(4) a fixed annual rent that is not less than the fair market rental value of the land;

(5) a fee for each user;

(6) other compensation acceptable to the commissioner; or

(7) a combination of the above.

(n) The annual compensation paid to the state for a recreational facilities development lease shall be reevaluated and adjusted at five-year intervals. The annual compensation for each five-year period after the initial five years of the lease shall be calculated by the same method used to establish the compensation for the initial five-year period.

(o) Before a lease is issued under this section, the land to be covered by the lease shall be surveyed. The survey must be adequate to describe the land to be covered by the lease.

(p) Before entering into a lease under this section, the commissioner shall require the lessee to post a performance bond or provide other security acceptable to the commissioner to cover the costs to the department of one or more of the following, as determined by the commissioner:

(1) completing the development, including site planning, under the terms and conditions of the lease;

(2) maintaining the development under the terms and conditions of the lease;

(3) restoring the lease site if the lease is abandoned or terminated.

(q) The term of the lease may not exceed 55 years. At the expiration of the lease, the commissioner may offer the lessee a right of first refusal on a new lease under this section for the same land if the commissioner determines that leasing the land for an additional term serves the best interests of the state.

(r) The lessee's violation of a provision of this section or of a term or provision of a lease issued under this section subjects the lessee to appropriate legal action and penalties, including a forfeiture of the lease.

(s) *[Repealed, Sec. 28 ch 90 SLA 1991].*

(t) In this section, "recreational facilities development" includes the development of lodges, resorts, and other tourism and recreation-related facilities.

**Sec. 38.05.075. Leasing procedures.** (a) Except as provided in [AS 38.05.035](#), 38.05.070, 38.05.073, 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.565, 38.05.600, 38.05.810, and this section, when competitive interest has been demonstrated or the commissioner determines

that it is in the state's best interests, leasing shall be made at public auction or by sealed bid, at the discretion of the director, to the highest qualified bidder as determined by the commissioner. A bidder may be represented by an attorney or agent at a public auction. In the public notice of a lease to be offered at public auction or by sealed bid, the commissioner shall specify a minimum acceptable bid and the lease compensation method. The lease compensation method shall be designed to maximize the return on the lease to the state and shall be a form of compensation set out in [AS 38.05.073](#)(m). An aggrieved bidder may appeal to the commissioner within five days for a review of the determination. The leasing shall be conducted by the commissioner, and the successful bidder shall deposit at the public auction or with the sealed bid the first year's rental or other lease compensation as specified by the commissioner, or that portion of it that the commissioner requires in accordance with the bid. The commissioner shall require, under [AS 38.05.860](#), qualified bidders to deposit a sum equal to any survey or appraisal costs reasonably incurred by another qualified bidder acting in accordance with the regulations of the commissioner or incurred by the department under [AS 38.04.045](#) and [AS 38.05.840](#). If a bidder making a deposit of survey or appraisal costs is determined by the commissioner to be the highest qualified bidder under this subsection, the deposit shall be paid to the unsuccessful bidder who incurred those costs or to the department if the department incurred the costs. All costs for survey and appraisal shall be approved in advance in writing by the commissioner. The commissioner shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease to the successful qualified bidder. If the receipt is not accepted in writing by the bidder under this subsection, the commissioner may offer the land for lease again under this subsection. A lease, on a form approved by the attorney general, shall be signed by the successful bidder and by the commissioner.

(b) When a valid existing federal grazing lease is cancelled to allow state selection of the area under lease, the lessee of the land has the preference right to lease the land without competitive bidding for a term equal to that originally granted in the cancelled federal lease and upon terms as favorable to the lessee as those contained in the cancelled federal lease.

(c) The owner or lessee of land that fronts on shoreland, tideland, or submerged land of the state may be granted a preference right to a lease for the shoreland, tideland, or submerged land without competitive bidding if the director determines that

(1) the lease of the shoreland, tideland, or submerged land is necessary to facilitate water transportation of goods, services, or resources to or from the owned or leased upland or for another water-dependent purpose;

(2) the proposed use of the shoreland, tideland, or submerged land is compatible with the classification of the land and with any applicable land

use plan adopted under [AS 38.04.065](#); and

(3) issuance of the lease to the shoreland, tideland, or submerged land will not interfere with prior existing rights to the leased land.

(d) If the commissioner issues a lease under (c) of this section, the right of access to the shoreland, tideland, or submerged land shall be nonexclusive in the lessee unless the commissioner grants the lessee the exclusive right to use the shoreland, tideland, or submerged land.

(e) The commissioner may require prequalification of bidders for a lease to be issued under [AS 38.05.070](#). If the commissioner determines to require prequalification, the procedures established by this section and the notice including prequalification requirements required to be given under [AS 38.05.945](#) shall be completed within 75 days of the receipt of the first lease application unless the commissioner grants additional time for the completion of the procedures. Within the 75-day period or the additional time granted by the commissioner, the commissioner shall complete

(1) classification under [AS 38.05.300](#);

(2) the procedures required by [AS 38.05.035\(e\)](#);

(3) any other action required by law for the disposal of the lease to a bidder except survey, appraisal, and the auction or sealed bid.

(f) If, after completion of the procedures required by (e) of this section, the commissioner determines that there is only one qualified bidder, the commissioner may issue a lease without competitive bidding at the approved, appraised market value of the land determined under [AS 38.05.840](#) or by another form of lease compensation specified by the commissioner from among those set out in [AS 38.05.073\(m\)](#) and designed to maximize the return on the lease to the state. The commissioner may establish terms and conditions for entry to the land pending survey and appraisal of the land. The commissioner shall issue the lease as soon as is practicable following the survey and appraisal of the land subject to the provisions of [AS 38.05.035\(e\)](#).

(g) Notice of an auction or sealed bid required under this section shall be made by certified mail to all prequalified bidders.

(h) A person aggrieved by a decision of the commissioner under this section may appeal to the commissioner within five days of the prequalification decision. The decision of the commissioner under this subsection may be appealed to the superior court.

***Sec. 38.05.076. Leases for pipeline purposes. [Repealed, Sec. 31 ch 3 FSSLA 1973].*** Repealed or Renumbered

***Sec. 38.05.077. and 38.05.078. Classification, disposal, and sale of remote parcels. [Repealed, Sec. 7 ch 103 SLA 1983. For current law see [AS 38.09](#)].*** Repealed or Renumbered

**Sec. 38.05.079. Remote cabin permit. [Repealed, Sec. 38 ch 91 SLA 1997].** Repealed or Renumbered

**Sec. 38.05.080. Rejection of bids.** Before the director signs the lease, the commissioner may reject all bids for leases when the best interest of the state justifies this action.

**Sec. 38.05.082. Leases for shore fisheries development; account.**

(a) The director, with the approval of the commissioner, may lease tide and submerged land for fisheries development. Fisheries development includes the utilization of shore gill nets or set nets for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide and submerged land.

(b) The director may classify land as subject to leases for fisheries development and publicly invite applications for lease of the selected areas. Each application shall be accompanied by an affidavit to the effect that the applicant presently intends to personally utilize the leased area for fishing purposes the following season. If two or more applications are received for the same shore area, the director shall award the lease to the most qualified applicant. In determining the qualifications of applicants, the director shall consider the length of time during which the applicant has been engaged in set netting, the proximity of the past fishing sites of the applicant to the land to be leased, the present ability of the applicant to utilize the location to its maximum potential, and other factors relevant to the equitable assignment of the disputed area. If the director cannot determine a preference between conflicting applicants for the same lease site on the basis of qualifications, the director shall select between the applicants by lot. An aggrieved applicant may appeal to the commissioner within 30 days for a review of the director's determination.

(c) A lease for set net fishing may be issued for any period not exceeding 10 years. If the commissioner determines that the land is not being utilized for the purpose for which the lease is issued, the lease may be declared void. The director shall establish a reasonable rental for the lease, equal to the administrative costs involved in processing the leasehold applications.

(d) Subleasing and renewals of leases are governed by [AS 38.05.095](#) and 38.05.102.

(e) The lease of submerged land conveys no interest in the water above the land or in the fish in the water.

(f) The shore fisheries development lease program account is established in the state treasury. The rents, fees, and other proceeds received by the department in connection with the issuance of shore fisheries development leases under this section shall be deposited into the account. The legislature may appropriate money deposited into the account for the operation of the

shore fisheries development lease program by the department or for any other public purpose.

**Sec. 38.05.095. Subleases.** (a) Except as provided in (b) of this section, a lessee may sublease or assign the leased land or a portion of it if, after application to the director, the director issues a permit. The director may issue a permit upon a finding that it is in the best interests of the state to do so.

(b) A nonprofit organization that is exempted from paying rent on state land under [AS 38.05.810](#) may not sublease or assign the land or a portion of it on which it has a lease.

**Sec. 38.05.096. Exemption from rental payments on land leased for certain liquefied natural gas storage facilities.** (a) A person leasing state land for a liquefied natural gas storage facility other than a gas storage facility subject to [AS 38.05.180](#)(u) may request an exemption from lease payments as provided in this section. The exemption is applicable for the periods described in (b) of this section.

(b) The exemption is available for the calendar year in which the liquefied natural gas storage facility commences commercial operation and for each of the nine calendar years immediately following the first year of commercial operation. However, an exemption is not applicable for the calendar year after the facility ceases commercial operation or for any subsequent calendar year.

(c) The lessee shall provide the director with any information the director requests to determine whether the lessee qualifies for the exemption.

(d) Information related to state land leased for a liquefied natural gas storage facility qualifying for the exemption in this section is public information and may be furnished to the Regulatory Commission of Alaska. On request, the director shall provide the name of each person using state land leased for a liquefied natural gas storage facility, the years for which an exemption was granted, and the amount of the exemption.

(e) A person receiving an exemption for a payment under this section that contracts to store liquefied natural gas for a utility regulated under [AS 42.05](#) shall reduce the storage price to reflect the value of the exemption.

(f) In this section,

(1) "ceases commercial operation" and "commences commercial operation" have the meanings given in [AS 31.05.032](#);

(2) "liquefied natural gas storage facility" has the meaning given in [AS 42.05.990](#).

**Sec. 38.05.097. Exemption from rental payments on land leased by nonprofit organizations.** (a) A nonprofit organization using state land

leased by it under [AS 38.05.070](#) - 38.05.105 and 38.05.810 for a youth encampment or similar recreational purpose is exempt from lease rental payments on that land. The nonprofit organization shall meet all other terms and conditions of the lease specified under [AS 38.05.070](#) - 38.05.105 and 38.05.810.

(b) A nonprofit organization which satisfies the requirements of this section that is using land under a lease in effect before July 1, 1978 may convert its lease to a new lease with terms exempting it from the payment of rent by submitting a written request to the director.

(c) In this section, "nonprofit organization" means nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific, or educational purposes or for the promotion of social welfare and which have received an exemption from the payment of federal income tax.

**Sec. 38.05.098. Senior citizens exemption.** (a) The real property occupied as a permanent place of abode by a resident 65 years of age or over and leased by that resident from the state in accordance with [AS 38.05.070](#) - 38.05.105 is exempt from the payment of annual lease rent. Only one exemption may be granted for the same property, and, if two or more persons are eligible for an exemption for the same property the parties shall decide between or among themselves which shall receive the benefit of the exemption. An exemption may not be granted for a portion of the leased real property which is used for a purpose other than as the permanent place of abode of the leaseholder.

(b) An exemption may not be granted under this section unless a written application for the exemption on a form provided for by the commissioner is submitted. The leaseholder must submit the application not later than 60 days before the anniversary date of the lease, and shall file a separate application for each lease year for which the exemption is sought. If an application is submitted within the required time and is approved by the commissioner, the commissioner shall allow a rental exemption for the lease year commencing on the anniversary date. The commissioner may at any time require proof of the right to an exemption claimed under this section.

**Sec. 38.05.100. Renewal of lease. [Repealed, Sec. 15 ch 257 SLA 1976].** Repealed or Renumbered

**Sec. 38.05.102. Lessee preference.** If land within a leasehold created under [AS 38.05.070](#) - 38.05.105 is offered for sale or long-term lease at the termination of the existing leasehold, the director may, upon a finding that it is in the best interest of the state, allow the holder in good standing of that leasehold to purchase or lease the land for its appraised fair market value at the time of the sale or long-term lease.

**Sec. 38.05.103. Rights of holder of security interest.** (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60 days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, covenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause.

**Sec. 38.05.105. Periodic rent adjustments.** (a) Each lease shall stipulate that at five-year intervals as specified in the lease the annual rent payment or other form of lease compensation specified by the commissioner is subject to adjustment. Changes or adjustments shall be based primarily on changes in the lease's fair market value. However, if the commissioner determines that single-family residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rent adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if single-family residential development actually occurs. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) *[Repealed, Sec. 37 ch 2 FSSLA 1992].*

(c) Changes or adjustments of annual rent on land under lease and used for single-family residential purposes in an area zoned for commercial or other nonresidential uses shall be based on an adjusted fair market value determined by reference to the actual use of the property and not by reference to the other uses permissible under the zoning ordinance.



## 2014 Statutes Material Sales

**Sec. 38.05.550. Disposal of materials.** (a) All materials owned by the state may be sold or conveyed as provided in [AS 38.05.550](#) - 38.05.565.

(b) Materials may only be sold or removed from sources or sites designated by the department. The department shall issue a decision under [AS 38.05.035](#)(e) that the sale and extraction of materials from that location is in the best interests of the state at the time each source or site is designated. The department shall give notice, in accordance with [AS 38.05.945](#), of the department's decision to designate a source or site for the sale and extraction of materials. After decision and notice, the department may sell materials continuously, without further finding or notice, from that designated source or site under this section until the source or site is closed by the department.

(c) Each sale of materials must be made through a materials sales contract on a form that has been approved by the attorney general. At the time of each sale, the department shall determine

(1) the location of the source or site from which materials are to be removed;

(2) the method of disposal as provided in [AS 38.05.555](#) - 38.05.565; and

(3) the limitations, conditions, and terms of sale, which shall address the utilization, development, and maintenance of the source of the materials.

(d) The commissioner shall provide for valuation of materials in or upon state land. Materials sold or conveyed under [AS 38.05.550](#) - 38.05.565 may, at the director's discretion, be sold at

(1) representative regional sales prices periodically determined by the commissioner for each type of material and for defined geographic regions, under procedures established by regulation; public notice under [AS 38.05.945](#) must be made whenever the commissioner revises the representative regional sales prices;

(2) fair market value determined by appraisal completed and approved within two years of the date of sale; or

(3) a price less than appraised value, determined under [AS 38.05.810](#)(a).

**Sec. 38.05.555. Negotiated sales and personal use of materials.** (a) Notwithstanding any other provision of [AS 38.05.550](#) - 38.05.565, the director may negotiate the sale of any amount of materials from a source or site designated under [AS 38.05.550](#)(b). The period of a contract for a sale of

materials negotiated under this section may not exceed five years.

(b) Sales of materials under this section must be made at a representative regional sales price set by the commissioner under [AS 38.05.550\(d\)\(1\)](#) unless

(1) the director determines that it is in the best interests of the state to sell the materials at fair market value determined by an appraisal provided by the department;

(2) the applicant, at its own cost, elects to provide an appraisal, acceptable to the department, determining the fair market value of the materials to be sold; or

(3) the sale is to a state or federal agency or political subdivision under [AS 38.05.810\(a\)](#) and the material to be extracted and removed is used for public purposes; sales under this paragraph may be at a price less than appraised value as determined by the director.

(c) Subsequent sales of similar materials from the same source or site may be made by the department at the price established by an appraisal provided under (b) of this section.

(d) Individual negotiated contracts for the sale of materials authorized by (a) of this section are not subject to [AS 38.05.035\(e\)](#) or 38.05.945.

(e) Materials from a source or site designated under [AS 38.05.550\(b\)](#) may be extracted and removed for personal use without cost up to a limit of two cubic yards a person within a one-calendar-year period. Extraction and removal of materials under this subsection must be approved by the department before extraction operations.

(f) Notwithstanding (a) - (e) of this section, for the purpose of creating incentives for the development of peat as a source of heat or power, the director may negotiate the sale of peat to individuals, organized or unorganized communities, tribal governments, or private profit or nonprofit organizations. Under this subsection, the director may provide

(1) for personal use by an individual, not more than 200 cubic yards of peat a year at no cost;

(2) for commercial use, not more than 30,000 cubic yards of peat during a single 10-year period at no cost; or

(3) for commercial use requiring more than 30,000 cubic yards of peat, the amount required by the user during a 10-year period beginning when the user uses more than 30,000 yards of peat at the price of

(A) 20 percent of the representative regional sales price determined by the director under [AS 38.05.550\(d\)\(1\)](#); or

(B) 20 percent of the fair market value determined by an appraisal completed under [AS 38.05.550\(d\)\(2\)](#), if the applicant provides the appraisal at the applicant's expense and the appraisal is approved by the commissioner.

**Sec. 38.05.560. Competitive sales of materials.** (a) The department shall offer materials from a source or site designated under [AS 38.05.550](#)(b) for competitive sale if the department determines that

(1) the sale would result in an exclusive use by the purchaser of a designated source or site;

(2) materials available at a designated source or site are insufficient to supply all anticipated buyers;

(3) the size of the designated source or site is too small to accommodate the extraction operations of all anticipated buyers; or

(4) it is in the best interests of the state.

(b) Notice of a competitive sale of materials from a source or site designated under [AS 38.05.550](#)(b) shall be given under [AS 38.05.945](#)(a)(4) and shall

(1) describe the location of the designated source or site, and the type and quantity of the materials to be sold;

(2) solicit potential bidders to register with the department to participate in the proposed sale; only persons registered to bid at a proposed sale of materials may bid; and

(3) include the minimum bid for materials to be sold.

(c) A notice of competitive sale required under (b) of this section may be combined with a notice required under [AS 38.05.550](#).

(d) If, after notice under (b) of this section, only one potential bidder has registered to bid at a proposed competitive sale, the competitive sale may be cancelled and the materials sold by negotiation under [AS 38.05.555](#).

(e) Materials sold under this section may be sold either by sealed bid or by public outcry or online auction, in the discretion of the department, to the highest qualified bidder as determined by the department. An aggrieved bidder may appeal to the commissioner under [AS 44.37.011](#) within five days after the sale for a review of the determination. The sale shall be conducted by the director or the director's designee, and, at the time of sale, the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by regulation. The director shall immediately issue a receipt containing a description of the materials purchased, the price bid, and the terms of sale. The receipt shall be accepted in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser, and the contract shall be signed by the director on behalf of the state. The director may impose conditions, limitations, and terms considered necessary and proper to protect the interests of the state.

**Sec. 38.05.562. Violations.** Violation of any provision of [AS 38.05.550](#) - 38.05.565 or the terms of the contract of sale subjects the purchaser to appropriate legal action.

**Sec. 38.05.565. Sale or disposal of materials for special purposes.**

(a) The department may negotiate the sale or otherwise dispose of materials from sources or sites other than those designated under [AS 38.05.550](#)(b) to

(1) municipalities, other state and federal agencies, or other entities under [AS 38.05.872](#); sales under this paragraph may be at less than fair market value, and materials may be disposed of free of charge if the director determines that the disposal is in the public interest;

(2) a licensed public utility or a licensed common carrier under [AS 38.05.810](#)(e); sales under this paragraph shall be at representative regional sales prices determined under [AS 38.05.550](#)(d)(1); or

(3) a holder of a permit, land lease, or right-of-way issued by the department, if the materials to be extracted and removed during the construction, use, or maintenance of a facility authorized by a permit, land lease, or right-of-way, are necessary and incidental to the primary purpose of the permit, land lease, or right-of-way, and the materials are put to beneficial use in a way that alters the character, usefulness, or availability of the materials in their native forms; the department may authorize the sale of materials under terms of the permit, land lease, or right-of-way; sales of materials under this paragraph must be at

(A) the representative regional sales price established under [AS 38.05.550](#)(d)(1) unless the sale is to a state or federal agency, political subdivision, or other entity under [AS 38.05.810](#)(a); or

(B) a price less than appraised value as determined by the director if the sale is to a state or federal agency, political subdivision, or other entity under [AS 38.05.810](#)(a) and the materials to be extracted and removed are used for public purposes.

(b) If materials are moved within and not removed from the boundaries of a permit, land lease, or right-of-way issued by the department without altering the character, usefulness, or availability of the materials in their native forms, the applicant may not be required to purchase the materials.

(c) In this section, "land lease"

(1) means a lease issued under [AS 38.05.070](#) - 38.05.105;

(2) does not include a lease issued under [AS 38.05.131](#) - 38.05.275.

## Current Regulations Land Leasing

### Chapter 58 Leasing of Lands

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#### Article 1 Use Limitation By Classification

**11 AAC 58.010. Agricultural lands** All lands leased for agricultural purposes shall be managed and utilized in accordance with approved soil conservation practices as employed in the area wherein the land is located.

**11 AAC 58.020. Commercial-industrial lands** All lands leased for commercial or industrial purposes shall be utilized only for these purposes, and in accordance with applicable building and zoning codes. In the absence of such codes the lessee shall, at least 30 calendar days prior to the commencement of construction or utilization, file with the director a plot plan, a general description of contemplated construction and a brief description of the business proposed. The director shall reject said plan within 30 calendar days of receipt thereof if he deems such utilization or construction contrary to the orderly development of the area or incompatible with existing development.

**11 AAC 58.030. Grazing lands** All lands leased for grazing purposes shall be managed, stocked and utilized in accordance with approved range management practices as employed in the area wherein the land is located. However, a lessee shall be allowed to grow and harvest forage crops on a grazing lease for his own use. Crops so produced shall not be sold. Grazing leases may be declared null and void in whole or in part if the director determines that the land or a part thereof is not being used for the purpose issued.

**11 AAC 58.040. Preference right grazing lease and forest service permittee lease** Repealed 8/16/89.

**11 AAC 58.050. Material lands** Repealed.

**11 AAC 58.060. Mineral lands** Repealed.

**11 AAC 58.070. Public recreation lands** Repealed.

**11 AAC 58.080. Private recreational lands** Lands classified as private recreational lands and leased for that purpose shall be used for noncommercial recreational purposes. No more than one residence shall be constructed on each lot so leased. However, the director may, if he deems utilization or construction contrary to the orderly development of the area or

incompatible with existing development, after proper notice, cancel the existing lease.

**11 AAC 58.090. Residential lands** Lands classified as residential lands and leased for that purpose shall be used for residential purposes only and in accordance with any applicable building and zoning codes. In the absence of such codes the lessee shall, at least 30 calendar days prior to commencement of construction or utilization, file with the director a plot plan and a general description of contemplated construction. The director shall reject said plan within 30 calendar days after receipt thereof if he deems such utilization or construction contrary to the orderly development of the area or incompatible with existing development.

**11 AAC 58.100. Reserved use lands** Reserved use lands are available for leasing and may be utilized under an Inter-agency Land Management Transfer. Lands transferred to a qualified agency may be utilized by sublease or any other manner, provided such utilization shall be consistent with the function assigned said agency and the provisions of the Land Act and these regulations unless otherwise exempted.

**11 AAC 58.110. Timber lands** Repealed.

**11 AAC 58.120. School lands and university lands** Repealed 8/19/77.

**11 AAC 58.130. Resource management lands** Repealed.

**11 AAC 58.140. Open-to-entry lands** Repealed.

## Article 2

### **Permits**

**11 AAC 58.200. Right-of-way or easement permit** Repealed.

**11 AAC 58.210. Special land use permit** The director, without prior approval of the commissioner, may issue special land use permits on such terms and conditions as he deems to be in the best interests of Alaska.

**11 AAC 58.220. Roads to subdivided state lands** Repealed.

## Article 3

### **General Provisions**

**11 AAC 58.300. Lands available for leasing** All lands, including tide, submerged or shore lands, to which Alaska holds title or to which Alaska may become entitled, may be leased, as hereinafter provided, for surface use. Nothing herein contained shall prevent the leasing of land classified for two or more purposes, provided that surface leasing is allowed under one or more of such classifications.

**11 AAC 58.310. Qualifications of applicants or bidders** Repealed.

**11 AAC 58.320. Application** A person seeking to lease state land must apply at the regional office of the division nearest the land applied for on a

form provided by the department. The fees prescribed by [11 AAC 05.010](#) must accompany each application.

**11 AAC 58.330. Deposits** Repealed 8/19/77.

**11 AAC 58.340. No rights before leasing** The filing of an application for a lease does not in any way vest any right in the applicant to a lease or to the use of the land applied for pending the issuance of a lease.

**11 AAC 58.350. Classification** Repealed.

**11 AAC 58.360. Review** Repealed 8/19/77.

**11 AAC 58.370. Public and charitable use** Repealed 8/19/77.

**11 AAC 58.380. Term of lease** Repealed 8/19/77.

**11 AAC 58.390. Appraisal** Repealed 8/19/77.

**11 AAC 58.400. Survey** Repealed.

**11 AAC 58.410. Rental** (a) Annual rentals in amounts up to and including \$500 must be paid on an annual basis. Annual rentals in amounts above \$500 must be paid either annually or in quarterly installments, at the discretion of the lessee. All rentals must be paid in advance.

(b) Minimum lease rental will be determined in accordance with [AS 38.05.840](#), except that the department will charge no less than \$500 in minimum annual rent or compensation for a lease that authorizes private recreational or residential use, or authorizes grazing at a stocking rate of fewer than 50 animal units, and no less than \$1,000 in minimum annual rent or compensation for a lease that authorizes any other use. A full appraisal will not be done if, based on a preliminary appraisal by a department employee who is qualified to determine the value of land under [AS 38.05.840](#), the department finds that the minimum annual rent required by this subsection exceeds the amount likely to be determined by a full appraisal. This subsection applies only to issuance or renewal after December 31, 2002 of a lease under [AS 38.05.070](#) - 38.05.080 or [AS 38.05.095](#), a lease under [AS 38.05.810](#) except as provided in this subsection, or a millsite lease under [AS 38.05.255](#). This subsection does not apply to a shore fishery lease under [AS 38.05.082](#), an aquatic farmsite lease under [AS 38.05.083](#), or a public and charitable use lease under [AS 38.05.810](#) for less than the appraised value.

**11 AAC 58.415. Survey and appraisal costs** Repealed.

**11 AAC 58.420. Public notice** Repealed 8/19/77.

**11 AAC 58.430. Location of lease auction** Repealed 8/19/77.

**11 AAC 58.440. Leasing procedure** Repealed 8/19/77.

**11 AAC 58.450. Receipt of bid** Repealed.

**11 AAC 58.460. Commissioner's rejection** Repealed.

**11 AAC 58.470. Appeal** Repealed.

**11 AAC 58.480. Completion of bid requirements** Repealed.

**11 AAC 58.490. Issuance of lease** Repealed.

**11 AAC 58.500. Proper location by the lessee** Repealed.

**11 AAC 58.510. Lease utilization** Leases must be utilized for purposes within the scope of lease and land classification. Utilization or development for other than the allowed uses is a violation of the lease. A development plan may be required on all leases. Failure to make substantial use of the land, consistent with the development plan, within five years, will, in the director's discretion, constitute grounds for cancellation.

**11 AAC 58.520. Adjustment of rental** Repealed 8/19/77.

**11 AAC 58.530. Subleasing** Repealed 8/19/77.

**11 AAC 58.540. Assignments** Repealed 8/19/77.

**11 AAC 58.550. Modification** A lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto or their respective successors in interest.

**11 AAC 58.560. Cancellation; forfeiture** (a) Leases in good standing may be cancelled in whole or in part, at any time, upon mutual written agreement by the lessee and the director.

(b) A lease is subject to cancellation in whole or in part if improperly issued through misrepresentation or error with respect to material facts.

(c) A lease may be cancelled if used for any unlawful purpose.

(d) The director will, in the director's discretion, cancel a lease, if the lessee defaults and the director determines the action is necessary to protect and enforce the state's contractual or other property rights. No improvements may be removed during any time the lessee is in default.

**11 AAC 58.570. Notice of default** Notice of default will be issued in writing as provided in [11 AAC 58.580](#). A copy of the notice will be sent to a holder of a security assignment approved under [AS 38.05.095](#) and [AS 38.05.920](#). For a lease issued under [AS 38.05.070](#) - 38.05.105 on or after June 23, 1977, the lessee or the holder of a security assignment may remedy the default in accordance with [AS 38.05.103](#), and within the time period established under that section, even if the lease provides for a shorter period.

**11 AAC 58.580. Notice or demand** Any notice or demand, which under the terms of a lease or under any statute must be given or made by the parties thereto, shall be in writing, and be given or made by registered or certified mail, addressed to the other party at the address of record. However, either party may designate in writing such new or other address to which such notice or demand shall thereafter be so given, made or mailed. A notice given hereunder shall be deemed delivered when deposited in a U.S. general or branch post office enclosed in a registered or certified mail prepaid wrapper or envelope addressed as hereinabove provided.

**11 AAC 58.590. Rights of security assignee** If a lease is forfeited or cancelled for cause, the holder of a security assignment approved under [AS 38.05.095](#) and [AS 38.05.920](#) may acquire the lease for its unexpired term, subject to the lease's existing terms and conditions.

**11 AAC 58.600. Entry and re-entry** In the event that the lease should be terminated as hereinbefore provided, or by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the lessee during the said term, the lessor or its agents, servants, or representative, may immediately or any time thereafter, re-enter and resume possession of said lands or such part thereof, and remove all persons and property therefrom either by summary proceedings or by a suitable action or proceeding at law without being liable for any damages therefor. No re-entry by the lessor shall be deemed an acceptance of a surrender of the lease.

**11 AAC 58.610. Re-lease** In the event that a lease should be terminated as herein provided, or by summary proceedings, or otherwise, the division may offer said lands for lease or other appropriate disposal pursuant to the provisions of this chapter or other applicable regulations.

**11 AAC 58.620. Forfeiture of rental** In the event that the lease should be terminated because of any breach by the lessee, as herein provided, the annual rental payment last made by the lessee shall be forfeited and retained by the lessor as partial or total liquidated damages for said breach.

**11 AAC 58.630. Written waiver** The receipt of rent by the lessor with knowledge of any breach of the lease by the lessee or of any default on the part of the lessee in observance or performance of any of the conditions or covenants of the lease, shall not be deemed to be a waiver of any provision of the lease. No failure on the part of the lessor to enforce any covenant or provision therein contained, nor any waiver of any right thereunder by the lessor unless in writing, shall discharge or invalidate such covenants or provisions or affect the right of the lessor to enforce the same in the event of any subsequent breach or default. The receipt, by the lessor, of any rent or any other sum of money after the termination, in any manner, of the term therein demised, or after the giving by the lessor of any notice thereunder to effect such termination, shall not reinstate, continue, or extend the resultant term therein demised, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given thereunder by the lessor to the lessee prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by the lessor.

**11 AAC 58.640. Expiration of lease** Unless the lease is renewed or sooner terminated as provided herein, the lessee shall peaceably and quietly leave, surrender and yield up unto the lessor all of the leased land on the last day of the term of the lease.

**11 AAC 58.650. Renewal of lease** Repealed.

**11 AAC 58.660. Preference rights** Repealed 8/19/77.

**11 AAC 58.670. Removal or reversion of improvements upon termination of lease** Repealed 8/19/77.

**11 AAC 58.680. Rental for improvements or chattels not removed**

Any improvements or chattels belonging to the lessee or placed on the lease during the lessee's tenure with or without his permission and remaining upon the premises after the termination date of the lease shall entitle the lessor to charge a reasonable rent therefor.

**11 AAC 58.690. Sanitation** The lessee shall comply with all regulations or ordinances which a proper public authority in its discretion shall promulgate for the promotion of sanitation. The premises of the lease shall be kept in a neat, clean and sanitary condition and every effort shall be made to prevent the pollution of waters.

**11 AAC 58.700. Building and zoning codes** Leased lands that lie within the jurisdiction of an authorized building or zoning authority shall be utilized in accordance with the rules and regulations of said authority. Failure to do so shall constitute a violation of the lease.

**11 AAC 58.710. Fire and forest protection** The lessee will take all reasonable precaution to prevent, and take all necessary action to suppress destructive or uncontrolled grass, brush and forest fires on leased lands and comply with all laws, regulations and rules promulgated and enforced by the protection agency responsible for forest protection within the area wherein the leased premises are located.

**11 AAC 58.720. Inspection** The lessee shall allow authorized representatives of the division to enter the leased land for inspection at any reasonable time.

**11 AAC 58.730. Use of materials** All coal, oil, gas and other minerals, all deposits of stone or gravel valuable for extraction or utilization, and all material subject to [11 AAC 71](#) are excepted from the operation of a lease of the land estate. Specifically, the lessee of the land estate may not sell or remove for use elsewhere any timber, stone, gravel, peat moss, topsoil, or any other material without specific authorization in the lease or a separate written authorization. However, material required for the development of the leasehold may be used on the leasehold, as authorized by the approved lease development plan.

**11 AAC 58.740. Rights-of-way** The lessor expressly reserves the right to grant easements or rights-of-way across leased land if it is determined in the best interest of Alaska to do so. The lessee whose lands such easements or rights-of-way shall cross shall be entitled to damages for all improvements or crops destroyed or damaged. Damages shall be limited to improvements and crops only and loss shall be determined by fair market value.

**11 AAC 58.750. Restrictions and reservations** Repealed 8/19/77.

**11 AAC 58.760. Damages** Repealed 8/19/77.

**11 AAC 58.770. Waste and injury to land** Repealed.

**11 AAC 58.780. Warranty** Repealed.

**11 AAC 58.790. Lease rental credit** Repealed.

**11 AAC 58.800. Hunting and fishing** The lawful pursuit or the hunting of game, the taking of fish and trapping, if sanctioned by a proper permit from the Alaska Department of Fish and Game, or the picking of berries shall not be denied on lands leased for agricultural or grazing purposes; provided, however, the director, may, upon request, grant permission, in writing, that all or a portion of the leased premises may be posted to prevent hunting and/or fishing and/or berry picking when it appears necessary in order to properly protect the lessee and his property.

**11 AAC 58.810. Approval of other authorities** Repealed.

**11 AAC 58.820. Conditional leases** Repealed.

**11 AAC 58.825. Youth encampment exemption** (a) An exemption from lease payments will be granted by the director for an eligible lessee, upon written request to the director by the lessee.

(b) A complete exemption from lease payments may be granted only if the lessee signs a sworn statement that the land is reasonably necessary for and is used for a youth encampment as defined in 11 AAC 58.910(31). In the event the leasehold is used for another purpose, the lessee shall pay the amount that would have been due had the exemption not been granted.

(c) In determining a lessee's qualification for exemption, the director will, in his discretion, liberally interpret the applicable statutes and regulations.

**11 AAC 58.830. Lease of land to another state agency** (a) When the commissioner determines that it is in the best interests of the state, a lease under AS 38.05.810 may be granted to the Department of Transportation and Public Facilities, the Department of Administration, or another state agency authorized to acquire facilities or space for the use of the state. Under this section, that agency may sublease the land to a developer for the construction of a facility if a substantial portion of the space in the facility will be leased back to the state for official use.

(b) The terms and conditions of the sublease may be determined by the sublessor state agency with the approval of the commissioner of natural resources.

(c) The sublease must be offered in accordance with the competitive bidding or negotiation procedures governing the sublessor agency's acquisition of facilities or space.

#### Article 4

### **Short Title and Definitions**

**11 AAC 58.900. Short title** This chapter pertains to the leasing of lands of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will

encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations."

**11 AAC 58.910. Definitions** In this chapter

- (1) "agricultural lands" means those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops;
- (2) "Act" means the Alaska Land Act, [AS 38.05](#);
- (3) "Alaska" means State of Alaska;
- (4) "Alaska lands" means all lands including shore, tide and submerged lands, or resources belonging to or hereafter in any manner acquired by Alaska;
- (5) "classification" means the designation of lands according to their apparent best use;
- (6) "commercial lands" means those lands which, because of location, physical features or adjacent developments, may best be utilized for nonindustrial business purposes;
- (7) "commissioner" means the Commissioner of the Department of Natural Resources;
- (8) "department" means the Department of Natural Resources;
- (9) "director" means the Director of the Division of Lands, Department of Natural Resources;
- (10) "division" means Division of Lands within the Department of Natural Resources. Administrative powers and other delegated duties as prescribed by law or regulations are vested in the director;
- (11) "fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used;
- (12) "grazing lands" means those lands which in their natural state have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock;
- (13) repealed 2/8/2001;
- (14) "land" means all lands under the jurisdiction of the division;
- (15) "lease" means a surface lease issued or held pursuant to the Act and these regulations;
- (16) repealed 2/8/2001;
- (17) repealed 2/8/2001;
- (18) repealed 2/8/2001;
- (19) "private recreation lands" means those lands which because of their location, physical features or adjacent development are chiefly valuable as outdoor recreational areas and may best be utilized by private noncommercial development;

- (20) "regulations" means the leasing regulations contained in this chapter, as well as all other pertinent regulations promulgated by the department;
- (21) "reserved use lands" means those lands which have been transferred, assigned or designated for present or future use by a governmental or quasi-governmental agency or for townsite development;
- (22) "residential lands" means those lands which because of location, physical features or adjacent development may best be utilized for single or multiple unit dwellings;
- (23) "sale" means the transferring of title to real property from the state to another for a consideration;
- (24) "state" means State of Alaska;
- (25) repealed 2/8/2001;
- (26) repealed 2/8/2001;
- (27) repealed 2/8/2001;
- (28) repealed 2/8/2001;
- (29) repealed 2/8/2001;
- (30) repealed 2/8/2001;
- (31) "youth encampment" means a program, offered by a nonprofit organization, that provides organized, supervised experiences and opportunities in outdoor recreation and living, and personal and social development for children and young adults, that includes daytime facilities or area for overnight camping, and that is used during any three months of a year;
- (32) "rental" means any form of compensation that the lease requires the lessee to pay, as set out in [AS 38.05.073\(m\)](#).

## Current Regulations Grazing Leasing

### Chapter 60 Grazing Leases

**11 AAC 60.010. Lands available for leasing** (a) Grazing leases may be issued on all lands except those which have been classified as "open to entry" pursuant to [AS 38.05.077](#), and those lands classified as "public recreation lands" "reserved use" lands under ch. 52 of this title.

(b) Lands classified under ch. 52 of this title as "residential lands," "private recreation lands," "agricultural lands," "commercial lands," "industrial lands" or "utility lands" shall be available for short term leasing only, as provided for in sec. 40(a) of this chapter.

**11 AAC 60.020. Application fee** An applicant for a grazing lease must apply to the division on a form provided by the department. The application fee prescribed by [11 AAC 05.010](#) must accompany each application.

**11 AAC 60.030. Reclassification** (a) The state specifically reserves the right to reclassify all or a portion of the leased area to other uses in accordance with [11 AAC 52.190](#).

(b) Reclassification of a portion of a leased area shall, whenever possible, be carried out in a manner which will minimize interference with the grazing use of the remaining lease area.

(c) The lessee shall be given written notice by certified mail, at least 90 days prior to any reclassification.

(d) The director shall adjust the lease rental to reflect changes in the leased area occasioned by any such reclassification.

**11 AAC 60.040. Term of lease** (a) Leases on land subject only to short term leasing under sec. 10(b) of this chapter shall not exceed a term of five years.

(b) All other leases shall be for any period as determined by the director to be in the best interest of the state, provided the term of the initial lease and any renewal thereof pursuant to [AS 38.05.100](#) does not exceed a total of 55 years.

**11 AAC 60.050. Lease rates** The value of the leased lands for purposes of auction minimum valuations, periodic reappraisals, and lease renewals, shall be determined on the basis of the value of the lands for grazing purposes. The grazing lease rates shall give due consideration to estimated carrying capacity for winter and summer use, the use of lands for the growing of forage to be consumed on the grazing lease, and other pertinent economic factors. The minimum leasing rate shall be \$0.03 per acre per annum.

**11 AAC 60.060. Lease utilization** Grazing leases shall be utilized only for purposes within the scope of the lease provisions, and the land classification. Utilization or development of the leased land for other than the allowed uses shall be grounds for cancellation of the lease. Failure to make substantial use of all or any part of the land, consistent with accepted range practices shall constitute grounds for cancellation.

**11 AAC 60.070. Identification of livestock** All livestock permitted on a state grazing lease shall be properly identified and such identification registered in accordance with AS 03.40.010 - 03.40.270. In addition, the director may require that the livestock be tagged, dyed or otherwise marked as a control on numbers permitted on a lease in accordance with the annual operating plan.

**11 AAC 60.080. Non-use** (a) To maintain the land at its highest productive capacity, the director may, at any time during the life of the lease, when he deems it necessary, declare all or any part of the lease to be in non-use. The period of non-use may be for any specified length of time up to the expiration of the lease itself.

(b) The lessee shall be given written notice of a declaration of non-use, and the director shall adjust the lease rental to reflect any reduction in the leased area resulting from such declaration.

(c) The lessee may at any time during the life of the lease take non-use on any or all of the grazing lease to adjust or improve operations under the lease. He cannot take non-use, however, merely to hold a grazing lease.

**11 AAC 60.090. Sub-leases** (a) Under no circumstances shall a lessee be permitted to sub-lease a grazing lease.

(b) Grazing lessees may, with the prior written approval of the director, pasture livestock owned by others on a temporary basis.

**11 AAC 60.100. Range improvements** (a) Lessee shall not make range improvements without first obtaining the written approval of the director.

(b) Applications to construct range improvements shall indicate the location of the proposed improvements, the necessity for such improvements, the estimated cost thereof, and that the improvements, as proposed, will not impair the value of the land or interfere with other reasonable uses thereof.

(c) All range improvements are subject to the provisions of AS 38.05.090.

**11 AAC 60.110. Other improvements** (a) Grazing lessees desiring to construct other improvements of a permanent nature, such as housing, barns, sheds, slaughterhouses, silos and grain or hay storage buildings, etc., within the grazing lease area, must apply for either the sale or lease of the lands under chs. 54, 57, or 58 of this title.

(b) If the proposed lease or sale is considered to be in the best interest of the state, the lands involved will be excluded from the grazing lease and may be leased or sold in accordance with existing lease or sale

procedures. In no event may the lands sold or leased exceed 40 acres, except that this limitation does not apply for a sale of an agricultural interest under ch. 57 of this title.

**11 AAC 60.120. Water rights** Any waters required for the full use and enjoyment of a grazing lease may be appropriated and reserved for the lessee's use by the director upon request of the lessee. Any such appropriation shall be in the name of the state and inure to the grazing lease lands, and be consistent with the provisions of the Water Use Act. The lessee shall be required to furnish such information as is necessary and requested by the director in order to effect an appropriation.

**11 AAC 60.130. Recreational and other compatible uses** (a) The lessee shall not interfere with the right of the public to enter the land for lawful pursuit of game animals, the taking of fish, the trapping of fur animals, or for temporary camping or other compatible uses.

(b) In order to protect the lessee's interest, the director may, if he deems necessary, grant written permission to post certain key areas.

(c) Lessee shall not prohibit or otherwise interfere with reasonable access to the leased area for other uses.

**11 AAC 60.140. Stock driveways** (a) In the event that an individual with livestock must cross the grazing lease of another, the livestock must be kept within the bounds of the stock driveway. The stock driveway will be adequately marked on both exterior boundaries.

(b) Prior to the movement of livestock, the lessee must apply to the director for a crossing permit, stating the dates of movement and the numbers being moved.

**11 AAC 60.150. Conversion privileges** (a) A lessee holding a grazing lease which has been issued pursuant to 11 AAC 58.030 or 11 AAC 58.040 may at any time convert the lease to a grazing lease subject to the provisions of this chapter.

(b) The term of the lease issued under such a conversion shall be identical to the term remaining on the original lease.

**11 AAC 60.160. General provisions** State grazing leases shall be issued subject to the general provisions contained in ch. 58 of this title, and, in addition, subject to the particular terms and conditions specified in ch. 60 of this title.

**11 AAC 60.170. Purpose - short title** The purpose of ch. 60 of this title is to ensure leasing of state range lands in a manner that will encourage development of the land consistent with its highest and best use. This chapter of this title may be referred to as the "GRAZING LEASE REGULATIONS."

**11 AAC 60.180. Definitions** In this chapter

(1) "crossing permit" means a permit, issued by the director, authorizing the use of a stock driveway to move livestock on or off the range;

(2) "grazing lands" means those lands which in their natural state have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock;

(3) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(4) "land" means all lands under the jurisdiction of the division;

(5) "non-use" means the discontinuance of use of all or part of a leased area in order to enable the resource to return to its normal productivity;

(6) "range improvement" means any improvement necessary for use of the lease for grazing of livestock, such as fences, corrals, loading and branding chutes, clearing and cultivation of lands for forage crops and survey of lands;

(7) "stock driveway" means a route, designated by the director, and marked along its exterior boundary, over which livestock are permitted to move across grazing lease areas.

## Current Regulations Shore Fisheries Leasing

### Chapter 64

### Shore Fisheries Leasing

**11 AAC 64.010. Short title** This chapter applies to leasing tide and submerged lands of the state for the purpose of shore fisheries development.

**11 AAC 64.020. Participation in shore fishery** No person is required to lease tide and submerged lands to participate in a shore fishery. However,

- (1) upon written or verbal notification by a lessee holding a valid shore fishery lease issued under this chapter, a set gillnetter shall remove any net or nets from the site or tract of the lessee if the lessee personally begins to commercially fish the lease site; and
- (2) no set gillnet may be set at less than the minimum distance established by Department of Fish and Game commercial finfish regulations set out in 5 AAC 03 - 5 AAC 39, from a net currently in use by a lessee holding a valid shore fishery lease issued under this chapter.

**11 AAC 64.030. Ownership** Repealed 3/30/85.

**11 AAC 64.040. Advisory committees** The director will, in his or her discretion, accept recommendations from recognized associations or groups whose members are engaged in the practice of set gillnet fishing, or establish an advisory group to recommend resolutions involving application conflicts or protests.

**11 AAC 64.050. Tide and submerged land available for leasing** The director will, in his or her discretion, classify for leasing, under 11 AAC 55, all unappropriated tide and submerged land where set gillnet fishing is allowed by the Alaska Department of Fish and Game. After the director designates an area as open to leasing, the director will publicly invite lease applications for all or specific portions of the open areas.

**11 AAC 64.060. Permanent improvements disallowed** No lessee may erect a permanent installation, building, structure, fixture, or facility upon a lease tract or site.

**11 AAC 64.061. Staking and filing period** An applicant may stake a set gillnet site or tract, and may file an application for a shore fishery lease, annually from May 1 to September 1. The director will extend, close, suspend, or otherwise modify the period for staking and filing an application if the director determines in writing that it is in the best interests of the state to do so.

**11 AAC 64.070. Size of lease tracts** (a) If an applicant has more than one set gillnet site, and the area between individual sites is not claimed by another person for set gillnet purposes, the applicant may include all such set gillnet sites in one lease tract if

(1) the maximum number of set gillnet sites included in one tract does not exceed that number allowed by 11 AAC 64.080;

(2) the maximum distance between set gillnet sites does not exceed twice the minimum distance, minus one foot, allowed between nets by Department of Fish and Game commercial finfish regulations, set out in 5 AAC 03 - 5 AAC 39, for the local area, unless otherwise determined by the director;

(3) the maximum distance of the tract side line from the nearest set gillnet site within the tract does not exceed one-half the distance allowed between set gillnet sites by Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 03 - 5 AAC 39; and

(4) the maximum distance between the seaward end line of a tract and the landward end line of an offshore tract is not greater than one-half the distance from the seaward end of the nearest set gillnet as determined by Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 03 - 5 AAC 39.

(b) In establishing the size and proper location of a tract, the director will, in his or her discretion, require the applicant to survey the tract.

**11 AAC 64.080. Maximum number of net sites and lease tracts** Except as provided otherwise in this section, the maximum number of sites allowed one applicant is that number established under Department of Fish and Game Commercial Finfish regulations set out in 5 AAC 03 - 5 AAC 39, except for Cook Inlet, where the maximum is three sites. The sites may be contained in one, two, or three tracts. In an area where, under established custom, the applicant has or currently uses the same set gillnet and other gear for high and low water sites, the director will, in his or her discretion, lease additional set gillnet sites, if the applicant submits proper justification.

**11 AAC 64.090. Staking of sites and tracts** Before submitting an application under 11 AAC 64.260, an applicant must stake each tract by placing the stake at the net anchor point. The location stake must be at least three feet above ground level and must support a sign showing the applicant's name, mailing address, limited entry permit number, and date of staking. For a low water tract, the location stake may be co-located with the high water stake. The sign on the low water stake must contain the information contained on the high water sign and must be labeled across the top as a low water site with the distance and bearing to the shoreward end of the net or net anchor point noted on the sign.

**11 AAC 64.100. Distance between net sites** Repealed 3/30/85.

**11 AAC 64.110. Public right-of-way** Repealed 8/19/77.

**11 AAC 64.120. Multiple land use** Repealed 8/19/77.

**11 AAC 64.130. Restrictions and reservations** Repealed 8/19/77.

**11 AAC 64.140. Damages** Repealed 8/19/77.

**11 AAC 64.150. Materials** Repealed 8/19/77.

**11 AAC 64.160. Herring spawn covenant** Repealed 8/19/77.

**11 AAC 64.170. Waste and injury to land** Repealed 8/19/77.

**11 AAC 64.180. Reasonable utilization** (a) Except as otherwise provided by (b) of this section, reasonable utilization of a site or tract means personally fishing each site of each leased tract for at least four legal fishing periods during the commercial fishing season.

(b) The lessee may refrain from fishing upon any one or all leased tracts for one year, but not for two consecutive years.

**11 AAC 64.190. Forfeiture of part or all of lease tract** Repealed 3/30/85.

**11 AAC 64.200. Closed area** The director will not issue a lease in an area closed to commercial fishing by the Department of Fish and Game. The closure of an area by the Department of Fish and Game will not result in the termination of a lease for failure of reasonable utilization. The closure of an area will not extend the term of an issued lease. The lessee may, however, request an extension of a current valid lease as provided for under **11 AAC 64.391**, if the area is reopened to commercial fishing.

**11 AAC 64.210. Closure of area after lease is issued** Repealed 3/30/85.

**11 AAC 64.220. Hardship clause; waiver of rental** The director will, in his or her discretion, waive the annual rental in the case of substantial injury, illness, call to military service, or legal closure of the fishery. An application for a waiver must be postmarked at least 30 days before the date the annual rental is due.

**11 AAC 64.230. Qualifications of applicant** An applicant for a lease is qualified if the applicant

- (1) is a citizen of the United States and is at least 18 years of age; and
- (2) holds a valid limited entry permit or interim-use salmon setnet permit for the area within which a lease is requested.

**11 AAC 64.240. Trusteeship for minors** The director will, in his or her discretion, issue a lease in trust for the benefit of a minor who is 10 years of age or older if the minor is otherwise qualified to lease under **11 AAC 64.230**. The trust automatically terminates upon the date of the minor's 18th birthday.

**11 AAC 64.250. Appointment of trustee** A person who is qualified under the laws of Alaska to act as a trustee may apply for approval to act as a trustee for a shore fishery lease on behalf of a minor. The director will issue the lease in the name of an approved trustee, subject to other provisions of this chapter. The trustee does not acquire any rights in the leased area by virtue of this trusteeship.

**11 AAC 64.260. Application** (a) An applicant shall file a shore fishery lease application with the department within 30 days after staking a shore fishery lease site. The filing date is determined by the postmark date of the application.

(b) A nonrefundable filing fee, as prescribed by **11 AAC 05.010**, must accompany each application.

(c) A shore fishery lease application must contain the following information:

- (1) the applicant's name, mailing address, and birthdate;
- (2) if the applicant is a minor, the name and mailing address of the trustee;
- (3) the applicant's limited entry permit or interim-use salmon setnet permit number;
- (4) the date the site was staked;
- (5) the number of seasons the applicant has commercially fished the site;
- (6) the number of years the applicant has participated in a shore fishery;
- (7) a description of the lease tract sufficient to locate the tract and sites on the ground and including the township, range, and protracted section in which the site is located, as well as the site's distance and bearing from the shoreward end of the net or net anchor point to a known fixed point, such as a permanent building, monument, or fixed natural feature;
- (8) a U.S.G.S. map of not more than 1:63,360 scale showing the location of the site;
- (9) a statement that the applicant intends to personally fish the site;
- (10) a statement that the applicant has complied with the staking requirements of [11 AAC 64.090](#) and that the applicant is within legal net distances as established by Department of Fish and Game Commercial Finfish regulations set out in [5 AAC 04](#) - [5 AAC 39](#); and
- (11) the names and addresses of adjacent right, left, shoreward and seaward setnet neighbors; if any.

(d) Upon acceptance of a shore fishery lease application, the division will send the applicant further instructions for completing a shore fishery diagram.

(e) Within 90 days after receipt of the instructions, the applicant shall provide the division with a completed and signed shore fishery diagram.

(f) If an applicant is unable to comply with any of the instructions for completing the shore fishery diagram, the applicant shall submit a notarized affidavit attesting to the reason or the cause for failing to comply. The affidavit will be made part of the lease document.

(g) Failure to provide the information required by this section constitutes grounds for denying the shore fishery lease application.

**11 AAC 64.270. Most qualified applicant** Repealed 8/19/77.

**11 AAC 64.280. Proof of qualification** In addition to the information submitted with the application, the director may request such additional proof of qualification as is deemed necessary to help effect an equitable

assignment of the disputed area. Failure to comply with any request for proof of qualification or additional information shall be reason for the disqualification of an applicant.

**11 AAC 64.290. Determination by lot** Repealed 8/19/77.

**11 AAC 64.300. Term of lease** Repealed 8/19/77.

**11 AAC 64.301. Term of lease** Upon the successful completion of all requirements of this chapter, and the resolution of any protest filed, the director will issue a lease for a period not to exceed 10 years. In determining the term of a lease, the director will consider the stability of the beach within the area, as well as any other applicable considerations or factors.

**11 AAC 64.310. Notice and posting** Repealed 8/19/77.

**11 AAC 64.320. Deposits** Repealed 8/19/77.

**11 AAC 64.330. Rights prior to leasing** The filing of an application for a lease shall not in any way vest any right in the applicant to a lease.

**11 AAC 64.340. Conditional use** Repealed 3/30/85.

**11 AAC 64.350. Issuance of lease** Repealed 3/30/85.

**11 AAC 64.360. Proper location by the lessee** Repealed 3/30/85.

**11 AAC 64.370. Annual rental** Annual rental shall be an approved proportionate share of the cost of administration of the total of the shore fishery development leasing costs, as determined by the director and concurred in by the commissioner. Annual rental shall be paid in advance of April 15, unless otherwise approved by the director, and shall be prorated from the 15th day of the month in which issued to the 15th day of April of the following year. All leases shall stipulate that the annual rental shall be subject to adjustment by the director at five year intervals and such adjustment is to be based on the administration costs involved, and shall in no way reflect the value of the leasehold.

**11 AAC 64.380. Receipt of annual rental** The first year's rental shall be receipted on the lease; thereafter the director shall immediately issue receipts for all rents paid.

**11 AAC 64.390. Renewal of lease** Repealed 8/19/77.

**11 AAC 64.391. Extension of lease** 90 days before the expiration of a valid lease, the lessee may request an extension of the lease. The director will, in his or her discretion, extend the lease for a period of up to 10 years if no changes in site or tract location have occurred, the beach has remained stable, the lease is in good standing with the department, the lessee remains qualified under 11 AAC 64.230, and no protest of the extension is received. A nonrefundable filing fee, as established by the department's approved fee schedule, must accompany a request for an extension.

**11 AAC 64.400. Preference to lease** Repealed 8/19/77.

**11 AAC 64.410. Lease termination** (a) The department will, in its discretion, terminate a lease if

- (1) the lessee fails to pay the annual rental;

(2) the director determines that the site is not being used for the purpose for which the lease was issued;

(3) the lessee misrepresented facts or made an error with respect to a material fact in the shore fishery lease application;

(4) the lessee fails to properly locate his tract and sites or fails to properly situate in the tract when commercially fishing;

(5) the lessee fails to maintain a valid limited entry permit or interim-use salmon setnet permit; or

(6) utilization of the tract or sites is not in accordance with 11 AAC 64.180;

(b) The director will notify a lessee in writing of the department's intention to terminate a lease under this section. The director will send the notice of termination to the last address provided to the department by the lessee. The notice is considered delivered when deposited in the mail.

(c) A lease termination is effective 30 days after the date of the notice, unless stayed by the commissioner in conjunction with an appeal filed by the lessee under 11 AAC 64.460.

**11 AAC 64.420. Notice of default** Repealed 3/30/85.

**11 AAC 64.430. Assignment** A lessee may assign a lease to another if

(1) the lease rental payments are current;

(2) the assignee is qualified under 11 AAC 64.230 or 11 AAC 64.240 and holds a valid limited entry permit or interim-use salmon setnet permit for the fishery;

(3) the assignee does not currently lease the maximum allowed sites for the fishery;

(4) approval of an assignment will not result in the assignee holding leases for more than the maximum allowable number of sites;

(5) the lessee and assignee complete the required assignment of lease form; and

(6) the director approves the assignment.

**11 AAC 64.440. Succession to applicant's interest** A person who is legally assigned all rights to another person's lease application succeeds to all rights and privileges of the original lease applicant under this chapter if the assignee submits

(1) a notarized statement setting out the name of the lease applicant, the lease applicant's address of record, the location of the site or sites, the date of lease application acquisition, and the name and address of each of the adjacent site holders, if any; and

(2) a notarized statement by the lease applicant stating the length of time the lease applicant has personally operated the site or sites, and stating that the lease applicant has relinquished to the assignee all rights to and interest in the site or sites.

**11 AAC 64.450. Protest** (a) A person may protest an application for or the location of a shore fishery lease site by mailing a statement of protest to the applicant and to the director. The protest may be filed from the time a site has been staked until the last date for filing a protest, as determined and published in writing by the department. The postmark date of the statement of protest constitutes the date of protest. If a protest is filed, the director will not issue a lease until resolution of the protest.

(b) A statement of protest must be in writing, must be signed by the protester, and must contain

- (1) the protester's name and mailing address;
- (2) the protester's limited entry permit number or interim-use salmon setnet permit, if any;
- (3) the applicant's name and address as shown on the staking sign;
- (4) a brief statement of reasons why the protester believes that the lease site location is invalid or that the protester is more qualified to fish at the lease site; affidavits may be included to support the reasons set out in the statement; and
- (5) a brief statement of the relief requested, which may be either denial of the lease site location, or a determination that the protester is more qualified to fish from the lease site and more entitled to lease the site than is the applicant.

(c) The applicant shall prepare a brief written response rebutting the protester's statement. The applicant shall mail the response to the protester and to the director within 30 days after receiving the statement of protest. Affidavits may be included to support the facts set out in the response.

(d) The director will base a decision resolving a protest on the criteria contained in [AS 38.05.082](#) and on the protest, response, supporting affidavits, and hearing, if one is conducted. The decision constitutes the final departmental action unless it is appealed.

**11 AAC 64.460. Appeal** An eligible person affected by a decision issued under this chapter may appeal that decision in accordance with [11 AAC 02.](#)

**11 AAC 64.470. Finality of decision** Repealed 11/7/90.

**11 AAC 64.480. Commissioner's rejection** Repealed 3/30/85.

**11 AAC 64.490. Disputes of boundary line location** In a dispute concerning one or more leased tract locations, the protesting party may request that the director establish or reestablish, by survey, the boundary lines of the tract or tracts in question. The director will, in his or her discretion, require that a survey be performed to determine the location of the boundary lines in dispute. The party or parties at fault shall pay the cost of the entire survey. The department will, in its discretion, terminate the lease of the party or parties at fault if they do not pay the survey costs.

**11 AAC 64.500. General plat requirements** Repealed 3/27/80.

**11 AAC 64.510. Paper plat procedure and requirements** Repealed 3/27/80.

**11 AAC 64.520. Survey requirements** Repealed 3/27/80.

**11 AAC 64.530. Preliminary plat requirements** Repealed 3/27/80.

**11 AAC 64.540. Survey procedure** Repealed 3/27/80.

**11 AAC 64.550. Procedure on final plat** Repealed 3/27/80.

**11 AAC 64.560. Final plat requirements** Repealed 3/27/80.

**11 AAC 64.565. Transition** Pending applications submitted under this chapter before March 30, 1985 will be adjudicated under the provisions of this chapter which are in effect after that date. The applicant will be notified of any additional requirements.

**11 AAC 64.570. Definitions** In these regulations, the following terms shall have the meaning indicated unless the context clearly requires a different meaning:

- (1) repealed 3/30/85;
- (2) "adjacent" means touching or lying in close proximity, as opposed to "contiguous" which requires a common boundary;
- (3) "boundary lines" means lines having a course and distance that enclose one tract;
- (4) repealed 3/30/85;
- (5) repealed 3/30/85;
- (6) "commercial fishing" means the taking, fishing for, or possession of fish, with the intent of disposing of them for profit, or by sale, barter, or in commercial channels;
- (7) "commercial fishing season" means the locally recognized commercial fishing season opened by field announcement by the Alaska Board of Fish and Game;
- (8) "commissioner" means the Commissioner of the Department of Natural Resources, State of Alaska;
- (9) "department" means the Department of Natural Resources, State of Alaska;
- (10) "director" means the Director of the Division of Lands;
- (11) "division" means the Division of Lands within the Department of Natural Resources;
- (12) "endline" means that boundary line of any lease tract that is parallel or nearly so with the shoreline;
- (13) repealed 3/30/85;
- (14) repealed 3/30/85;
- (15) "lease" means a surface lease for shore fisheries development issued or held pursuant to these regulations;
- (16) repealed 3/30/85;
- (17) repealed 3/30/85;
- (18) repealed 3/30/85;

(19) "monument" means a natural, physical, artificial, or record monument, as customarily used to appropriately define or mark an area;

(20) "neighbor" means an adjacent commercial fisherman who is to be designated as right or left side, or seaward or shoreward neighbor;

(21) "offshore" means those submerged lands lying seaward from the line of mean low tide;

(22) repealed 3/30/85;

(23) repealed 3/30/85;

(24) repealed 3/30/85;

(25) repealed 3/30/85;

(26) repealed 3/30/85;

(27) repealed 3/30/85;

(28) "site" means setnet site, individual setnet location, setnet fishing site, and set gillnet site;

(29) repealed 3/30/85;

(30) "tidelands" are those lands that are periodically covered by tidal waters between the elevation of mean high and mean low tides;

(31) "tract" means a parcel of tidelands leased under this chapter and may include one, two, or three set gillnet sites;

(32) repealed 3/30/85;

(33) repealed 3/30/85;

(34) repealed 3/30/85;

(35) "party at fault" means the lessee or lessees who, following a dispute over tract or site boundaries or locations, is determined by the director to be in error;

(36) "permanent" means not capable of being readily dismantled or removed from a site or tract within the 24 hours after notification, without destroying the object dismantled or removed or damaging the site or tract, and does not include setnet anchors;

(37) "shore fishery diagram" means a graphic depiction of an applicant's or lessee's site which indicates the relationship of the site to local landmarks and adjacent or neighboring sites.

## Current Regulations Material and Timber Sales

### Chapter 71 Timber and Material Sales

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#### Article 1 Timber and Material Sale Procedures

**11 AAC 71.005. Applicability** This chapter applies to sales of timber or material by the State of Alaska.

**11 AAC 71.010. Timber and material sale offering** (a) The director will determine the location and approximate volumes of timber and of material to be made available for sale under this chapter.

(b) The director will include each proposed timber sale on the five year sale schedule in accordance with AS 38.05.113, unless that sale is exempt under (c) or (d) of this section.

(c) A timber sale negotiated under AS 38.05.115 is a small sale exempt from AS 38.05.113.

(d) An emergency sale is exempt from AS 38.05.113. An emergency sale is a sale of timber that the director finds must be made on an expedited basis to

- (1) avoid loss of the market value of timber that has been damaged by fire, insect infestation, or an act of nature;
- (2) avoid loss of the market value of timber that is threatened by insect infestation;
- (3) create fire breaks;
- (4) reduce fuel-loading of the forest; or
- (5) reduce the spread of insect infestation.

(e) The division will offer timber or material sales on land selected by a municipality under AS 29.18.201 - 29.18.213 with the concurrence of the municipality.

**11 AAC 71.015. Timber or material requested by other state agencies** The division will, in its discretion, transfer timber or material to another state agency by an interagency land management assignment or negotiated sale pursuant to AS 38.05.810. However, the other state agency may not convey the timber or material

to a third party. The division will not offer a timber or material sale within the area which is subject to the inter-agency land management assignment without the concurrence of the other state agency.

**11 AAC 71.020. Notice of sale** (a) The division will give public notice of a competitive sale of timber or material in accordance with AS 38.05.945. Public notice given under this subsection will state

- (1) the minimum acceptable bid, if applicable;
- (2) the method of bidding;
- (3) the time and place of sale;
- (4) the amount of deposit required;
- (5) whether additional information is available at division offices;
- (6) the duration of the contract;
- (7) that the state reserves the right to reject any or all bids and that, unless all bids are rejected, the sale will be awarded to the responsible qualified bidder offering the highest total bid value for timber and the highest unit price for material; and
- (8) the amount of any bond required.

(b) The division will, in its discretion, make a negotiated sale of 500 M.B.M. or less of timber or 25,000 cubic yards or less of material without giving public notice of the sale.

(c) The division will give public notice of a negotiated timber sale authorized by AS 38.05.118 in accordance with AS 38.05.945.

(d) The division will, in its discretion, make a negotiated sale of timber or material authorized by AS 38.05.810(a) without giving public notice of the sale in accordance with AS 38.05.945.

**11 AAC 71.025. Applicable laws and regulations** A purchaser or licensee under this chapter and the purchaser's or licensee's employees, subcontractors, and assigns shall comply with the federal, state, and local laws and regulations which apply to the protection and use of the land on which the timber or material is located. Compliance with the provisions of this chapter is a condition of a sale or license under this chapter. Failure to comply with the provisions of this chapter is cause for suspension or cancellation of the sale or license.

**11 AAC 71.030. Qualifications of applicant or bidder** (a) A person is qualified to apply or bid for a timber or material sale if he is

- (1) at least 18 years of age, if an individual;

(2) legally competent to enter into and carry out the provisions of a sale contract; and

(3) licensed to do business in the state, if the sale is for commercial intention.

(b) The director may require an applicant or bidder to submit conclusive evidence of his qualifications under (a) of this section.

**11 AAC 71.035. Application for negotiated sales** (a) A person seeking to negotiate the purchase of more than 10 M.B.M. of timber or more than 200 cubic yards of material must file an application at the regional office of the division nearest the desired purchase site on a form provided by the department. The applicant must file a separate application for each sale. The application fee, if any, prescribed by 11 AAC 05.010 must accompany the application. The application must contain the contract numbers of each timber or material contract the applicant has entered into with the state during the previous 12 months. The applicant need not list the applicant's log salvage licenses. For negotiated sales, the division will consider the subsidiaries, divisions, branches, partnerships, or joint ventures of the applicant to be the same applicant.

(b) A person who seeks to salvage unbranded or abandoned timber must apply for a log salvage license in accordance with 11 AAC 71.405.

**11 AAC 71.040. No rights before sale** Filing an application for the purchase of timber or material does not vest a right in the applicant to enter upon the land or to sever or remove the timber or material. If a person, while unauthorized to do so, enters upon state land and commences cutting, extraction, or salvage operations, the division will, in its discretion, refer the person to the Department of Law for appropriate civil or criminal action.

**11 AAC 71.045. Negotiated sales** (a) A purchaser may enter into more than one negotiated timber or material sale contract with the division, so long as the total amount purchased within any 12-month period does not exceed the negotiated timber or material sale limits set by AS 38.05.115. The negotiated timber sale limit set by AS 38.05.115 does not apply to timber acquired under a log salvage license under 11 AAC 71.400 - 11 AAC 71.435.

(b) Notwithstanding the provisions of (a) of this section, the division will not enter into a negotiated sale contract with a person to whom the division has previously sold timber or material if the director determines that the contract will unfairly exclude from participation in the sale of timber or material other interested persons to whom the division has not previously sold timber or material.

(c) The minimum price for a negotiated timber sale is the base price established by the director under 11 AAC 71.092.

(d) The director will establish a minimum deposit for a negotiated sale of more than 10 M.B.M. of timber or 200 cubic yards of material, which the purchaser must make at the time the sale contract is entered into. For a timber sale contract,

the director will require a deposit of at least five percent of the negotiated price and may require as much as 100 percent. For a negotiated material sale contract, the director will require a deposit of at least ten percent of the negotiated price or \$250, whichever is more. The department will retain the deposit to cover administrative costs incurred in offering the negotiated material sale, except that if the purchaser removes and pays for at least 75 percent of the material volume covered by the contract, the deposit may be applied, in whole or in part, to the final payment that becomes due under the contract. A purchaser may make a deposit under this section in cash or by certified check, cashier's check, or money order.

(e) A negotiated timber sale, other than a timber sale negotiated under [AS 38.05.118](#), is for a period of time that may not exceed one year. The division will not grant an extension of time under this subsection.

**11 AAC 71.050. Negotiated personal-use timber sales; limited material permits**

(a) The division may negotiate with a person for the sale of timber for the person's personal use, or issue a revocable, nonexclusive permit for the removal of up to 200 cubic yards of material for personal or commercial use. Timber acquired by a purchaser in a sale under this section may not be sold, bartered, or used for commercial purposes.

(b) The division will, in its discretion, require a person applying for a negotiated personal-use sale of timber to be used other than for fuel wood to show proof of having land on which to use the timber and to show proof that timber acquired by the person in previous personal-use sales was actually used in accordance with the terms of that sale.

(c) The purchaser must make payment in full of the total sale price in order for a contract to be executed for a personal-use timber sale or to receive a limited material permit under this section. A formal application or application fee is not required for a limited material permit.

(d) A negotiated personal-use timber sale is for a negotiated period of time that may not exceed one year. The division will not grant an extension of time under this subsection.

**11 AAC 71.055. Negotiated sales under AS 38.05.118** (a) The division may negotiate with a local manufacturer for a timber sale under [AS 38.05.118](#) if the director determines that

(1) the rate of unemployment in the area in which the timber is located is at least 135 percent of the statewide average rate of unemployment for the preceding 12-month period for which a statistical comparison is available, or the rate of unemployment is expected to exceed 135 percent of the statewide average within two years;

(2) a permanent manufacturing facility exists in the area in which the timber is located with the capacity to process at least 50 percent more on a board-foot-per-day basis than the average daily production of the manufacturing facility during the three-year period immediately preceding

the date of the sale or such a facility is expected to exist within two years;  
and

(3) an economically operable state timber resource exists in the area in which the timber is located and the state timber resource has the capacity to sustain a level of harvest on a sustained-yield basis that is at least 20 percent greater than the level of harvest of the state timber resource on the date of the sale.

(b) In determining whether a negotiated sale under this section is in the best interests of the state, the commissioner will consider

(1) the local manufacturer's

(A) financial backing and capability;

(B) experience in the proposed undertaking; and

(C) ability to meet bonding or insurance requirements; and

(2) any other factors the commissioner determines to be in the best interests of the state.

**11 AAC 71.060. Competitive sales** The division will conduct public oral outcry auctions for the competitive sale of timber or materials in accordance with the procedures established for land auctions by 11 AAC 67.045. If the division sells timber or materials by sealed bid, the sealed bids must be on bid forms furnished by the division, signed, and submitted as specified in the notice of sale. In the event of a tie in high sealed bids, the division will determine the successful bidder by lot. The division will reject a bid containing or submitted with a condition or qualification on or a material alteration of the terms as specified in the notice of sale, or which is otherwise not in accordance with law.

**11 AAC 71.065. Competitive sale bid deposits** (a) A bidder at an oral outcry auction conducted under 11 AAC 71.060 must deposit with the selling agent, before being eligible to bid, at least 10 percent of the appraised value of the timber or materials on which he intends to bid if the appraised value is \$100,000 or less, and at least five percent or \$10,000, whichever is more, if the appraised value is between \$100,000 and \$500,000. If the appraised value is \$500,000 or more, the director will state the minimum deposit in the notice of sale.

(b) If the sale under 11 AAC 71.060 is by sealed bid, the bidder must deposit an amount determined in accordance with (a) of this section, based on the amount of the sealed bid.

(c) A bidder may make a deposit under this section in cash or by certified check, cashier's check, or money order.

**11 AAC 71.070. Pre-sale deposits for negotiated timber sales** (a) In addition to the deposit required under 11 AAC 71.045, if any, the director will, in his discretion, require an applicant for a negotiated timber sale under 11 AAC 71.035

to deposit an amount equal to the estimated cost of the appraisal, survey, and advertising required under this chapter.

(b) If the division awards the sale to the applicant, the division will credit the money deposited under this section to the amount owed the state for stumpage under the terms of the sale.

(c) If the division does not award the sale to the applicant, the division will refund the money deposited under this section which has not been spent to the applicant.

**11 AAC 71.075. Award of sale** (a) Within 30 days after receipt by certified mail of a contract under this chapter, the purchaser of timber or material must sign and return the contract, together with any required bond. However, the director may, in his discretion, extend the period an additional 30 days. If the purchaser fails to complete the contract as required in this section his deposit under 11 AAC 71.070 will be forfeited.

(b) For competitive sales, if the successful bidder fails to comply with the requirements of (a) of this section the director may offer the sale within 45 days to the next high bidder at the price which he bid and under the same terms and conditions. If the next high bidder accepts the offer of sale at the price he bid, he must sign and return the contract, together with a required bond, within 30 days of receipt of the contract by certified mail.

**11 AAC 71.080. Passage of title** Except for timber under a valid log-salvage sale license, all right, title, and interest in or to timber or material included in a contract remains with the state until the timber or material has been cut or severed, determined as to volume, removed from the site, and paid for in compliance with contract provisions and applicable laws and regulations. Timber or material which is not removed from the sale or license area by the purchaser or licensee within the period specified by the contract or license or by an extension to the contract or license remains the property of the state.

**11 AAC 71.085. Volume determinations** (a) The division will estimate timber volumes used in appraisals and as a basis for the volume of timber included in a timber sale offering by a timber cruise method prescribed by the director.

(b) Timber volumes reported in cutting reports by the purchaser as a basis for payment must be determined by scaling, unless otherwise specified in the contract.

(c) Material volumes shall be determined in the manner required by the contract.

**11 AAC 71.090. Pricing for sale of materials** (a) The commissioner will price material for sale under AS 38.05 and this chapter in accordance with this section.

(b) The commissioner will periodically establish base prices for material that represent the administrative cost to the state of conducting the sale. The base

prices may vary by area to account for local conditions on administrative cost. The department will use the base prices for material sales at less than their appraised value to a government agency under [AS 38.05.810](#)(a).

(c) The commissioner will periodically establish representative sales prices for material that are an estimate of the material's fair market value. Representative sales prices may vary by area to account for local conditions, but may not be less than the base prices established under (b) of this section. The commissioner will, in the commissioner's discretion, sell up to 25,000 cubic yards of materials for the representative sales price without an appraisal.

(d) Except as provided in (b) and (c) of this section, material will be sold for its appraised fair market value. Appraisal methods will be those customarily used by the appraisal profession.

(e) The appraised fair market value for material sold under (d) of this section will consider operating costs unique to the material source. The sales price for material sold under (c) of this section will, in the discretion of the commissioner, allow for adjustments for operating costs unique to the material source, including

(1) testing for and removal of contamination caused by another party's previous use of the material; or

(2) road construction that will benefit the state after the sale is concluded.

(f) Repealed 6/21/98. (g) Repealed 6/21/98.

**11 AAC 71.092. Pricing for sale of timber** (a) The commissioner will determine the price of timber for sale under [AS 38.05](#) and this chapter in accordance with this section.

(b) When the commissioner considers entering into a timber sale contract under [AS 38.05.123](#),

(1) the commissioner will establish a base price for timber stumpage that represents the cost to the Division of Forestry of administering the timber sale contract after purchase; the Division of Forestry may not sell the timber for less than its base price;

(2) the base price for timber determined under (1) of this subsection is subject to adjustment; the commissioner will, in the commissioner's discretion, establish an initial stumpage rate; the rate is set by adding adjustments to the base price based upon factors that include, but are not limited to,

(A) the projected or actual percentage of the volume of timber sold under the contract that is locally manufactured into high value-added wood products or other value-added wood products; and

(B) the projected or actual costs to the purchaser of the timber of establishing or improving local manufacturing facilities for the wood products.

(c) Except for timber that is subject to sale under a timber sale contract as provided in [AS 38.05.123](#)(a), the department will sell timber on the basis of its appraised price. The appraised price is a formal determination of the timber's fair market value and is determined by an appraisal conducted by the commissioner. The commissioner will, in the commissioner's discretion, select and apply one or more appraisal methods to determine the appraised price of the timber. Appraisal methods include, at the discretion of the commissioner, comparative market or transactional evidence; end or residual values; other methods customarily used for appraising timber; or another method designed to yield fair market value as determined by the commissioner. To make the appraisal, the commissioner will, in the commissioner's discretion, use costs, prices, values, and other information obtained from prudent operators, state and federal agencies, industry associations, price or market reporting services, or other sources that the commissioner considers reliable.

(d) The commissioner will, in the commissioner's discretion, adjust the appraised price or adjust the method of appraisal under (c) of this section to allow for operating costs. Operating costs that the commissioner may allow include, but are not limited to, costs for activities such as recovering, removing, handling, storing, or transporting the timber.

(e) Except when a redetermination of the appraised value of unharvested timber is required by [AS 38.05.118](#)(a), a contract for the sale of timber will, in the discretion of the commissioner, provide for a redetermination of the appraised price of the timber at specified intervals in order to evaluate the original appraised price as a continued indicator of fair market value. The department may conduct a redetermination under [11 AAC 71.210](#) whenever a timber sale contract is extended. A timber sale contract must specify other conditions when a redetermination is required and must specify the method of redetermination.

**11 AAC 71.094. Number of high value-added contracts per region** (a) For the purpose of entering into timber sale contracts for local manufacture of high value-added timber products under [AS 38.05.123](#), the commissioner will negotiate no more than the following number of timber sale contracts each year: (1) 10 sales per year in region I; (2) five sales per year in region II; and (3) five sales per year in region III.

(b) For the purposes of this section, the regions and their boundaries are the same as the regions and boundaries set out in [AS 41.17.950](#) (State Forest Practices Act).

**11 AAC 71.095. Performance bond** (a) In connection with a timber or material sale, the director will, in his discretion, require the purchaser to provide a performance bond to guarantee performance of the terms of the contract.

(b) If the director requires a performance bond under this section, the bond amount will be based on the total value of the sale: If the total value of the sale is

(1) \$50,000 or less, the bond amount will be at least 10 percent of the total value of the sale;

(2) between \$50,000 and \$100,000, the bond amount will be at least \$5,000; or

(3) \$100,000 or more, the bond amount will be at least five percent of the total value of the sale, but will not exceed \$200,000.

(c) If the value of the sale is less than \$10,000, the bond amount will be rounded to the nearest \$100.

(d) If the value of the sale is more than \$10,000, the bond amount will be rounded to the nearest \$1,000.

(e) The performance bond must be executed on a form provided by the division and may be

(1) a corporate surety bond issued by a corporation licensed to do business in Alaska;

(2) a personal bond secured by cash or its equivalent or by negotiable securities acceptable to the director, in a sum equal to the amount of the bond, together with an assignment of the security to the state which is attached to and becomes a part of the security; or

(3) an individual surety bond guaranteed in a sum equal to the amount of the bond by each of at least two individual sureties who are not related to the purchaser, are of good financial standing, are acceptable to the director, and have liquid assets sufficient to meet any obligation arising from the contract.

(f) The performance bond must remain in effect for the duration of the contract or until released in writing by the director.

(g) If, as determined by the director, the removal of timber or material from a portion of the sale area has been satisfactorily completed, the director will, in his discretion and upon written request of the purchaser, reduce the amount of the performance bond.

**11 AAC 71.096. Definition of "high value-added wood product"** For the purposes of a negotiated timber sale made under AS 38.05.123, "high value-added wood product" has the meaning given that term in AS 38.05.123(j), and, in addition, means laminated veneer lumber, shakes, and shingles.

**11 AAC 71.098. Availability of processing facilities** (a) As part of a negotiated timber sale under AS 38.05.123, in addition to the requirements of AS

38.05.123(f), a prospective purchaser of state timber in the sale shall identify the facilities that the prospective purchaser will use for processing the timber.

(b) Timber purchased under AS 30.05.123 may not be harvested unless the facilities identified by the purchaser under (a) of this section are operational and capable of processing the timber.

**11 AAC 71.100. Rights-of-way** (a) The division will obtain options for the rights-of-way necessary to grant access to a timber sale area. The division, in its discretion, will require a timber purchaser under this chapter to convey to the state temporary easements satisfactory to the director for roads used in hauling timber across private land to the intersection with the nearest public road or public water. Before the acquisition of the easements, the director will consult with adjacent landowners whose interests may be affected by their location.

(b) A purchaser of material under this chapter is responsible for providing access to the material sale area. If a material purchaser obtains an easement or right-of-way over privately owned land, the purchaser shall ensure that the easement or right-of-way provides an easement or right-of-way to the state as well as to the purchaser.

## Article 2

### **Timber and Material Sale Contracts and Operations**

**11 AAC 71.200. Contract provisions** A timber or material sale contract must include, if applicable, but is not limited to

(1) a description of the sale area, the timber volume or material to be removed from the sale area, the method of payment by the purchaser, the method of removal of the timber or material, the bonds and deposits required of the purchaser, the method of scaling to be used by the purchaser, the purchaser's liability under the contract, the improvements to and occupancy of the sale area required of the purchaser, the reservation of timber or material within the sale area to the division, the provisions of 11 AAC 71.025, 11 AAC 71.080, 11 AAC 71.205, 11 AAC 71.225, 11 AAC 71.235 - 11 AAC 71.240, and 11 AAC 71.280 as they relate to the contract, the warranties made by the division, and the waiver of rights made by the purchaser;

(2) the purchaser's site-specific operating requirements including, but not limited to, requirements under 11 AAC 71.245, 11 AAC 71.255, 11 AAC 71.265, and 11 AAC 71.270 and requirements relating to boundary markers and survey monument protection; erosion control and protection of water; fire prevention and control; roads; sale area supervision; protection of fish, wildlife and recreational values; sale area access and safety;

(3) provisions relating to logging methods, silvicultural practices, reforestation, snag felling slash disposal, and stump heights; and

(4) provisions relating to the removal of included timber. Except for timber required or authorized to be left, the purchaser shall fell and buck all trees meeting or exceeding minimum contract utilization standards and shall remove the trees from the sale area.

**11 AAC 71.205. Amendments to contract** (a) A timber or material sale contract may, upon approval of the director, be amended to include at the same unit price additional timber or material in the sale area or in an area adjacent to, or in the immediate vicinity of, the sale area if the amount of timber or material to be included in the amended contract does not exceed 25 percent of the volume provided for in the contract before amendment and if

(1) the volume of timber or material estimated to be in the sale area by the division was grossly in error; or

(2) timber in the sale area has been blown down or infested with insect or disease and prompt harvest is in the interest of full and efficient utilization.

(b) Amendments to the contract will be made in writing and become part of the contract upon mutual agreement of the director and purchaser. However, an amendment under this subsection may not materially affect or change the meaning or intent of the contract.

**11 AAC 71.210. Contract extension** (a) A contract under this chapter must state the date upon which the severance or extraction of timber or material under the contract is to be completed.

(b) A contract may be extended before its expiration if the director determines that the

(1) delay in completing the contract is due to unforeseen events beyond the purchaser's control, but not including events that a prudent bidder would take into account such as market fluctuations, equipment failures, or typical weather conditions; or

(2) extension is in the best interests of the state.

(c) A written request for a timber sale contract extension must be submitted to the division of forestry at least 30 days before the contract expiration date. A contract extension may not exceed one year.

**11 AAC 71.215. Assignments** (a) A purchaser may not assign all or part of a contract under this chapter without the written approval of the director. The director will, in his discretion, approve an assignment of all or part of a contract upon written request of the purchaser if the director determines that the assignment will not prevent timely completion of the contract.

(b) A purchaser is responsible for complying with the provisions of a contract regardless of whether he assigns all or part of a contract to another person.

**11 AAC 71.220. Suspension** The director will, in his discretion, suspend all or part of the operations under a contract if he determines, after notice, that the purchaser has breached a provision of the contract. At the request of the purchaser a hearing will be scheduled by the director as soon as possible after the suspension has been imposed to review the director's determination.

**11 AAC 71.225. Termination of contract** If the purchaser breaches a provision of the contract, the director will, in his discretion, give the purchaser written notice of the breach. If, after giving the purchaser notice of the breach, the breach is not remedied in the time specified by the director, the director will, in his discretion, terminate the contract. If the director terminates the contract, title to the timber or material which has not passed to the purchaser vests in the state, and the purchaser is liable for damages sustained by the state arising from the purchaser's breach.

**11 AAC 71.230. Primary manufacture of timber** (a) The director will, in his discretion, require that primary manufacture of timber removed under this chapter be accomplished within the state to the extent consistent with law.

(b) For the purposes of this section, the director will consider timber which has been manufactured into a product for use without further processing as having been primarily manufactured only if the director determines that there is a market for the product.

**11 AAC 71.235. Use of roads and facilities** The state has the right to use, for the protection and administration of state lands, a road constructed by the purchaser for access to the timber or material acquired by the purchase under this chapter. The division will, in its discretion, authorize other persons to use roads and facilities constructed and maintained by the purchaser if the use does not interfere with the operations of the purchaser and if the other persons either perform a share of maintenance of the roads and facilities based on their use of the road and facilities or pay to the purchaser the cost of their share of the maintenance as agreed upon by the purchaser and the other persons. If the purchaser and the other persons cannot agree upon the cost of the other persons' share of maintenance of the road and facilities, the director will determine that cost.

**11 AAC 71.240. Sale of other timber and materials** The division reserves the right to sell from the sale area during the time that a purchaser's contract is in effect timber or material which is not covered by the contract if the removal of the timber or material will not interfere, in the director's judgment, with the operations of the purchaser.

**11 AAC 71.245. Damages** (a) A purchaser shall conduct operations under a contract under this chapter in a workmanlike manner and may not unnecessarily damage the land or resources in the sale area. Damage attributable to the purchaser's operations which, as determined by the director, is excessive or was avoidable must be corrected by the purchaser to the satisfaction of the director within the time designated by the director. The division will assess a purchaser's liability for damage in accordance with the purchaser's contract.

(b) If a purchaser cuts or removes timber or material which is not designated for cutting or removal under the purchaser's contract, the purchaser is liable for damages as provided in the purchaser's contract.

**11 AAC 71.250. Protection of improvements** A purchaser under this chapter shall promptly restore improvements damaged by the purchaser's operations. The purchaser shall keep roads and skid trails designated for forest protection or other purposes free of logs, slash, and debris and shall promptly repair the roads and skid trails if they are damaged by the purchaser's operations. The purchaser shall maintain roads during the term of the contract with allowance for normal wear and tear.

**11 AAC 71.255. Sanitation** A purchaser under this chapter shall maintain improvements located on state lands and used by the purchaser in connection with the purchaser's operations in a clean condition. If a purchaser constructs, operates, or maintains buildings, toilets, garbage pits, or other structures in the sale area, the purchaser must do so in accordance with applicable regulations of the Department of Environmental Conservation and Department of Fish and Game. If a purchaser moves a structure, camp, or other improvement located on state land from one location to another or if the purchaser abandons the improvement, the purchaser shall burn or otherwise dispose of the debris and the abandoned improvement and shall clean and restore the site of the improvement unless otherwise specified in the contract. A purchaser shall dispose of refuse in a manner which prevents it from entering a body of water.

**11 AAC 71.260. Notice or demand** A notice or demand which, under the terms of a contract under this chapter or under a statute, must be given or made by a party to the contract, must be in writing, and must be given by registered or certified mail addressed to the other party at the address of record. Notice is effective upon receipt by the other party.

**11 AAC 71.265. Rehabilitation and intensive management practices** (a) The director will, in his discretion, require a purchaser of material to rehabilitate the sale area. The contract will include a special provision requiring the rehabilitation and the appraised unit cost of the material for sale shall reflect this requirement. The director will, in his discretion, require the purchaser to submit a complete mining plan for a large material-sale area which must be rehabilitated under this subsection.

(b) The director will, in his discretion, require a purchaser of timber to provide site-specific measures for intensive management practices on the sale area. The intensive management practices may include, but are not limited to, seedbed preparation, seeding, planting, thinning, and pruning. The director will arrange for intensive management practices under this subsection by including specific provisions in the contract and allowing for the intensive management practices in setting the appraised price of timber for the sale.

**11 AAC 71.270. Proper location by purchaser** A purchaser is responsible for the accurate location of operations under the purchaser's contract under this chapter

and for a survey necessary for the accurate location, unless otherwise specified in the contract.

**11 AAC 71.275. Purchaser's representative** During the time that operations under a purchaser's contract under this chapter are in progress, the purchaser shall have an authorized representative available on the site of the operations to receive and carry out, on the purchaser's behalf, a notice or instruction given by an agent of the division relating to the performance of the contract.

**11 AAC 71.280. Inspection and reports** (a) Activities conducted on state land under timber or material sale contracts or under log salvage licenses are subject to inspection by agents of the division. Books and records of a purchaser or licensee, and of the purchaser's or licensee's contractors and subcontractors, relating to operations under the contract or license are also subject to inspection by agents of the division. Upon request of the purchaser or licensee, the division will keep information obtained under this section confidential to the extent permitted by law.

(b) In a material sale the director will, in his discretion, require the purchaser to submit monthly, semiannual, annual, or other periodic reports, including a final report, on a form provided by the division. The reports must provide an accurate accounting of the quantity of materials removed.

### Article 3

## **Timber and Logging Requirements**

**11 AAC 71.300. Annual operating plan** A purchaser of timber under this chapter shall if required by the contract, before beginning operations within the timber sale area, and before beginning operations each calendar year thereafter, prepare an annual plan of operations acceptable to the director. The plan of operations may be modified by written mutual agreement of the director and the purchaser.

**11 AAC 71.305. Quarters for state personnel** The director will, in his discretion, require a purchaser of timber under this chapter to provide cabins or quarters of the customary type in use in logging camps and satisfactory to the state for use by state personnel inspecting timber contract operations. Ownership of the cabins or quarters remains with the purchaser. The purchaser shall rent the cabins or quarters to state personnel at a rate agreed upon in advance by the director and the purchaser.

**11 AAC 71.310. Construction authorization** (a) The division will, in its discretion, authorize a purchaser under a timber sale contract under this chapter to

(1) construct, reconstruct, and maintain roads, bridges, and other transportation facilities needed for cutting and removing timber; and

(2) construct in the sale area temporary buildings or other improvements necessary for logging or processing timber.

(b) Transportation facilities and other improvements constructed by a purchaser under (a) of this section must be located, constructed, and maintained in

accordance with the provisions of the purchaser's timber sale contract and, unless otherwise specified in the contract and except as provided in [11 AAC 71.305](#), must remain on the sale area as property of the state.

(c) Design and location plans for transportation facilities constructed under (a) of this section must comply with the purchaser's contract.

**11 AAC 71.315. Log identification** The division will, in its discretion, require a purchaser of timber under this chapter to identify timber with a brand or other mark approved by the director before removing the timber from the sale area.

**11 AAC 71.320. Orderly progress of logging** The director will, in his discretion, require that operations on a subdivision of a timber sale area be completed before logging begins on other subdivisions.

**11 AAC 71.325. Completed areas** If a purchaser has satisfactorily complied with the timber sale contract requirements on a subdivision of the sale area and the director has acknowledged the purchaser's compliance in writing, the division will not require the purchaser to perform additional work under the contract on the subdivision.

**11 AAC 71.330. Loss of timber** If timber under a contract under this chapter is destroyed or damaged by fire, wind, flood, insects, disease or other cause to the extent that it is unmerchantable, the holder of title to the destroyed or damaged timber bears the loss. The state is not obligated to supply, nor is the purchaser obligated to accept and pay for, other timber in place of the destroyed or damaged timber. A loss of or damage to timber removed from the sale area under the contract must be borne by the purchaser. This section alone does not relieve either party to a contract of liability for negligence.

**11 AAC 71.335. Hazard reduction** For a timber sale area in which the director determines that logging slash will pose a serious hazard to effective forest protection or regeneration, the director will require the purchaser to reduce the hazard by burning or by another method specified in the timber sale contract. The appraisal prepared for the sale under [11 AAC 71.092](#) will reflect the cost of hazard reduction required by this section.

**11 AAC 71.340. Safety** A purchaser of timber under this chapter and the purchaser's employees and subcontractors shall conduct their operations under the timber sale contract in a safe and workmanlike manner in compliance with the state occupational safety and health standards for logging established by the Alaska Department of Labor and Workforce Development and shall take the steps reasonably necessary to allow the agent of the division to safely scale and inspect cutting, logging, construction, or other activities of the purchaser under the contract.

**11 AAC 71.345. Snag felling** A purchaser under this chapter must fell dead timber concurrently with the purchaser's logging operation unless otherwise specified in the timber sale contract.

**11 AAC 71.350. Stump heights** A purchaser of timber under this chapter must cut stumps in a manner which minimizes waste and does not exceed the maximum height set by the timber sale contract. Stumps which are not cut as specified in the purchaser's contract must be paid for by the purchaser at the rate set in the contract for fixed and liquidated damages.

#### Article 4

### **Unbranded or Abandoned Timber Property Sales**

**11 AAC 71.400. Sale of unbranded or abandoned timber property** (a) The director will, in his discretion

(1) designate areas in which he intends to offer log salvage licenses for the sale of unbranded or abandoned timber property; or

(2) accept nominations for a salvage license for a specific area, the size or boundaries of which the director will, in his discretion, limit to manageable units.

(b) A log salvage license transfers title to the unbranded or abandoned timber property in the license area. However, the title and interest in the timber property which is not removed from the license area within the period the license is in effect revert to the state.

**11 AAC 71.405. Application for log salvage license** (a) A person who seeks to salvage unbranded or abandoned timber property from the water, shoreland, or tideland of the state may apply in person or by mail to an office of the division. The application must be on a form provided by the division, be signed by the applicant, and contain the following information: the specific geographical area of state water and shoreland upon which salvage operations will be conducted; the type of salvage operation proposed, including the specific kind of equipment to be used and measures proposed to protect against environmental damage; and a description of nearby timber operations.

(b) To qualify for a log salvage license, an applicant must be licensed to do business within the state and must have a current log brand for rafting, floating, or towing timber property in the waters of the state.

(c) An applicant may hold only one log salvage license at a time and may not simultaneously be the operator of or have an interest in salvage operations under another log salvage license.

**11 AAC 71.410. Selection of applicant** (a) The division will grant log salvage licenses offered under 11 AAC 71.400(a)(1) and (a)(2) on a first-come, first-served basis to qualified applicants, subject to (b) of this section.

(b) To be eligible for selection, an

(1) applicant must have submitted an application or nomination for the salvage area;

(2) applicant must meet the requirements of [11 AAC 71.405](#); and

(3) applicant, if the applicant has previously held a log salvage license, must have met the terms of the previous license.

(c) Repealed 9/6/96.

**11 AAC 71.415. License fees and conditions** (a) Before issuing a log salvage license, the division will publish notice of its intent to claim abandoned timber property, as required by [AS 45.50.234](#). At the time of application, the applicant shall bear the cost of advertising.

(b) The license fee prescribed by [11 AAC 05.010](#) must accompany each application for a log salvage license.

(c) The licensee is responsible for obtaining the permits required by law for the salvage operation. The division will inform the licensee of associated permit requirements and will assist the licensee in obtaining permits by supplying relevant information.

(d) If the salvage operation could, in the director's judgment, cause substantial harm to state land, fisheries, or wildlife, or to another operator, either because of the nature of the area in which the salvage operation will take place, the type of operation proposed, or the applicant's qualifications, the applicant shall post a liability bond in an amount the director judges sufficient to cover possible damages, but not to exceed \$10,000.

(e) A log salvage license is valid for one year from the date of issue but shall be temporarily suspended upon notification by transporter of timber to permit timber recovery in the area of salvage. If a log salvage license is suspended under this subsection, the director will, in his discretion, extend the term of the license for a period equal to that portion of the operating season in which the licensee's access to the area of the salvage operation was denied. If, after issuance of a log salvage license, a state-approved log booming, rafting, or storage area is built in the area of the salvage operation during the period the log salvage license is in effect, the director will, in his discretion, modify the log salvage license.

(f) A log salvage licensee may annually renew a log salvage license obtained under [11 AAC 71.400\(a\)\(1\)](#) for up to three years by paying the license fee prescribed by [11 AAC 05.010](#) at least 30 days before the expiration date of the license, and by qualifying under [11 AAC 71.405](#). The division will include provisions relating to renewal of a log-salvage license under this section in the original license.

**11 AAC 71.420. Prohibited areas** The area in which salvage operations may be conducted under a log salvage license does not include the shoreline within one mile of state-approved log booming, rafting, or storage area or pulp or sawmill.

**11 AAC 71.425. Timber lost in salvage license area** The licensee shall make a reasonable effort to identify and separate the lost timber from that which is being

salvaged and shall notify the division of the location of the lost timber the licensee discovers within the area in which the salvage operations are conducted.

**11 AAC 71.430. Revocation or suspension** Upon determination by the director that a licensee or applicant has violated a provision of 11 AAC 71.400 - 11 AAC 71.430 or has made a false statement on his application for a log salvage license or on a report required by a license, the director will, in his discretion, revoke or suspend the license or deny the application. If the director determines that a licensee has altered, obliterated, or removed log brands, has willfully taken unauthorized logs, or has otherwise violated a provision of 11 AAC 71.400 - 11 AAC 71.430, the director will, in his discretion, refuse to consider a subsequent application for a log salvage license from that person.

## Article 5 **Log Brands**

**11 AAC 71.500. Log brand** In this chapter and in AS 45.50.210 - 45.50.325, "brand" means

- (1) a mark or other designation that has been registered with the department; or
- (2) an impression stamped on timber property with a branding hammer.

**11 AAC 71.510. Barged logs** Timber property transported by a self-dumping barge will be presumed, upon being loaded on the barge, to be intended to be put in a waterway of the state within the meaning of AS 45.50.230(a).

**11 AAC 71.520. Brand design** (a) A diagram or design on paper, within the meaning of AS 45.50.210(b), will be considered acceptable if it is a sketch or drawing with exact dimensions shown, or a paint or ink impression of the brand. The department will, in its discretion, request the owner of a brand to furnish a paint or ink impression of the brand on paper at any time in order to confirm that the owner's branding hammer conforms to the design of the brand as registered.

(b) The actual size of the brand must be at least two inches in diameter or dimensions.

**11 AAC 71.530. Application requirements** An application must be accompanied by the registration or renewal fee prescribed by 11 AAC 05.010 and, if requested by the department, an impression of the brand to be registered and additional descriptive information.

**11 AAC 71.540. Cancellation of registration** (a) The department will, in its discretion, cancel a brand registration, following notice and an opportunity to be heard

(1) if the owner fails to furnish an impression of the brand or information about the brand or use of the brand when requested to do so by the department;

(2) upon conviction under [AS 45.50.320](#); or

(3) if the applicant or owner fails to reply to a certified or registered letter from the department requesting information concerning the log brand within a specified period of time; the time period will not be less than 15 days from the date the letter is metered.

(b) A brand registration will be cancelled by request of its owner. The cancellation will be effective upon receipt by the department of a written notice from the owner requesting the cancellation.

**11 AAC 71.550. Fees for registration or transfer of registration** Repealed 1/1/86.

**11 AAC 71.560. Reservation of brands** When an acceptable application has been received for registration or renewal of brand registration, the brand will be reserved to the applicant.

**11 AAC 71.570. Registration upon transfer** No registered brand may be transferred to or used by or on behalf of a third party except after prior written notice to the department, accompanied by a true copy of the instrument of transfer as required by [AS 45.50.260](#), together with the registration transfer fee prescribed by [11 AAC 05.010](#). Upon receipt and filing for record of a copy of the transfer instrument and the fee, the department will register the brand and issue a certificate to the new owner.

**11 AAC 71.580. Use of unregistered brand** Logs branded with an unregistered brand, or with a registered brand used by a person not authorized to use it, will be considered for all purposes to be unbranded.

**11 AAC 71.590. Notice or demand** Any notice or demand under this chapter or under [AS 45.50.215](#) - 45.50.325 must be in writing, and must be sent by certified or registered mail to the other party at the address of record. Either party may designate in writing a new address to which the notice or demand is to be mailed. A written notice or demand is considered delivered when mailed from a U.S. general or branch post office.

## Article 6 General Provisions

**11 AAC 71.900. Warranty** The state warrants neither the quantity nor the quality of the timber or material to be removed from an area under a contract or license under this chapter. However, to the extent practicable and within the limits of funding, the division will attempt to estimate volumes of upland timber in conjunction with a sale using accepted methods in the trade with a standard error factor of plus or minus 10 percent.

**11 AAC 71.910. Definitions** In this chapter

(1) "competitive sale" means a sale which is open to competitive bidding by either oral outcry auction or sealed bid;

(2) "contract of sale" or "contract" means a written agreement in which the state agrees to sell and the purchaser agrees to buy certain timber or material;

(3) "cruise" means an inventory of the timber in a sale area to determine the quantity and quality of forest products which can be derived from it;

(4) "director" means (A) for timber sales, the director of the division of forestry; and (B) for material sales, the director of the division to whom the commissioner's material sale authorities under [AS 38](#) are delegated;

(5) "division" means the division to which the authority of the director of lands has been delegated;

(6) "fair market value" means the highest price described in terms of money, which timber or material would bring if offered for sale for a reasonable time in the open market by a seller willing, but not forced, to sell to a buyer willing, but not forced, to buy, both being fully informed of the purposes for which the timber or material is best adapted or could be used;

(7) "lost timber" means timber property as defined in [AS 45.50.232](#) relating to reporting of lost logs to the department;

(8) "material" includes, but is not limited to, the common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, topsoil, peat, and sod;

(9) "M.B.M." means 1,000 board foot measure;

(10) "negotiated sale" means a timber sale not exceeding 500 M.B.M. or its equivalent except as authorized under [AS 38.05.118](#), or a material sale not exceeding 25,000 cubic yards or equivalent measure;

(11) "primary manufacture" means manufacture which is first in order of time or development; the term

(A) when used in relation to a sawmilling operation, means the breakdown process in which logs are reduced in size by a headsaw, gangsaw, or edger to the extent that the residual cants, slabs or planks do not exceed a nominal eight and three-quarters inches in thickness;

(B) when used in relation to a pulp operation, means the breakdown process to the point at which wood fibers have been separated;

(C) when used in relation to an operation for veneer for plywood production, it means the production of green veneer;

(D) when used in relation to poles or piling, whether treated or untreated, means manufacture for the purpose of use as poles or piling; and

(E) when used in relation to timber processing wastes, means manufacture into chips;

(12) "public auction" has the meaning provided in (1) of this section for "competitive sale";

(13) "purchaser" means a person who has purchased timber or material and has entered into a contract under this chapter;

(14) "sale" means the transfer of title to timber or material from the state to the purchaser for consideration;

(15) "sale area" means the land area on which the designated timber or material of the sale is located; "sale area" includes roads or other transportation facilities necessary for the removal of the timber or material.

(16) "scaling" means the determination of log volume by measuring, sample measuring, linear measuring, counting, or weighing or by another method acceptable to the director;

(17) "timber" means a tree, log, pole, bolt, or other wood product;

(18) "timber processing wastes" means timber, mill residue, logging residue, or other timber processing products not presently being used or in demand for higher-value products;

(19) "unbranded or abandoned timber property" has the meaning provided in [AS 45.50.230\(a\)\(3\)](#) and 45.50.235.