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February 19, 2021

Mr. Brandon McCutcheon
Department of Natural Resources
550 W 7th Ave Ste 1070
Anchorage, AK 99501
Submitted via email: dnr.mining.regulation@alaska.gov

Subject: Mining Regulations, Title 11 AAC; opportunity to comment on proposed regulations

Dear Mr. McCutcheon:

The Alaska Miners Association (AMA) writes to submit comments on proposed revisions to DNR's mining regulations pursuant to passage of SB155.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

In addition to our comments below, we have enclosed a redline showing our proposed revisions to the regulations. See Exhibit A. The base document for Exhibit A was the existing regulations (as copied and pasted from the DNR website) with the changes from the proposed regulations added. The redlines show AMA's requested additional changes to the DNR-proposed regulations and is provided for convenience and clarity.

11 AAC 86.115

We believe that the addition to subsection (b) is a misstatement of the law and should be deleted. A valid location on state-selected land *does* create prior rights against subsequent locators, including on state selected lands. The proposed exception language reverses the intent of 38.05.275 and implies that a location could be made that would not have priority over a subsequent location. We find nothing in AS 38.05.275 that abrogates the rights of a prior locator against a later locator if the prior claims are valid. We have proposed clarifying edits to other language in this subsection as shown in Exhibit A.

11 AAC 86.121

In 11 AAC 86.121, the proposed subsection (a) is contrary to the language of AS 38.05.190. Under the statute, a defect in qualifications requires notice and an opportunity to cure before the person's claims can be declared invalid. The regulations should at least acknowledge the notice and cure provisions of the statute expressly, rather than simply cross-referencing the statutory provisions. A reader who does not look up the statutory language would be left with the impression that mineral interests can be

declared invalid when a person ceases to be qualified without due process of notice and an opportunity to cure.

With respect to subsection (a)(1), a certificate cannot be involuntarily dissolved (a corporation can be, but not a certificate). The corporation may be reinstated within two (2) years after an involuntary dissolution. The corporation also remains in existence to wind up its affairs, including disposing of real property held by the corporation. A corporation can challenge the cancellation of its certificate and appeal the revocation of its certificate. See AS 10.06.863 and 10.06.865. A limited liability company has similar rights. A foreign limited liability company must register in the State but is not issued a certificate as is a corporation. DNR should not attempt to restate or summarize the DCCED regulations regarding entities qualified to do business in the State of Alaska. The statutory provision in AS 38.05.190(g) and the DCCED regulations adequately address this issue.

The language of subsections (a)(2) and (3) indicates that the person must remain qualified at all times, creating confusion regarding the notice and cure requirements. Because one of the methods to cure a defect in qualifications is to transfer the claims to a qualified person, the proposed language that requires a trust or an association to be in compliance “at all times” is misleading.

It would be helpful to adopt regulations that provide guidance to the department on how to handle these situations. AMA suggests that in lieu of the proposed subsection (a), the regulations indicate that DNR should not declare claims invalid during any proceeding to challenge the cancellation of a certificate or an appeal of the revocation of a certificate. Please see our suggested changes in Exhibit A.

In subsection (b), the regulations should acknowledge that the failure to remain qualified, in itself, cannot result in loss of mineral rights unless a person fails to timely cure the qualification defect. Because a person must be qualified to locate a mining claim, this will not prevent the department from declaring a location certificate invalid if the locator was not qualified at the time of location.

In subsection (c), we propose to delete the reference to associated regulations because all requirements for qualification are set forth in the statute.

We propose deleting subsection (d). One purpose of the notice and cure provision in the statutory amendments was to discourage overstaking due to technical defects in qualifications. Inviting potential overstakers to report defects is inconsistent with the spirit and intent of the statutory amendments. Instead, we propose that this subsection be used to clarify what should happen when an unqualified cotenant fails to correct a qualifications deficiency. Please see our suggested provision in Exhibit A.

11 AAC 86.202

The new subsection (d) in 11 AAC 86.202 should be deleted. The mapping requirements for new locations are already set forth in multiple regulations, such as 11 AAC 86.210(4) and 11 AAC 86.215(7). In addition, the proposed language is inconsistent with 11 AAC 86.140 which acknowledges that no locator can determine the validity of another person’s existing mining claim and often cannot determine the boundaries of such a claim. While we would like to work with DNR to improve the accuracy of the data reflected in Alaska Mapper, a locator cannot currently rely on Alaska Mapper to provide accurate information.

11 AAC 86.140

In 11 AAC 86.140, please correct what appears to be an error in the cross reference to subsection .215(a)(7). 11 AAC 86.140 should be corrected to refer to .215(a)(7) instead of .215(a)(6), which refers to identifying the recording district in which the claim is located and not mapping requirements.

11 AAC 86.215

In 11 AAC 86.215, it is the time of recording that is relevant to the use of a single map for multiple locations rather than the time of posting. It is not uncommon for contiguous claims to be posted over the course of more than one day and all of the location certificates to be recorded at the same time. Please change “simultaneously posting” to “simultaneously recording” to reflect this reality and continue the long-standing practice in the industry.

In new subsection (g) of 11 AAC 86.215, we propose to clarify the language describing a location that is situated partially on lands open to location and partially on lands available only to leasehold locations. A discreet location cannot include both a mining claim and a leasehold location (2 locations). Instead, the new subsection (g) should state that “Locations posted under AS 3805.195(b) that include lands open to location for both mining claims and leasehold locations...” Also, the proposed language was unclear as to whether the locator or the department is required to subdivide the location. We believe it was intended that the department would take that action when assigning file numbers and have suggested clarifying language.

11 AAC 86.220

In 11 AAC 86.220(b), the proposed statement “Qualifying labor is *defined* (emphasis added) by AS 38.05.240,” is inconsistent with the language and intent of SB 155. The amended language in AS 38.05.240 was carefully crafted to provide examples of the types of activities that qualify as labor (included) without setting forth an exhaustive list of what constitutes labor. The regulations should expressly recognize that the listed activities in 38.05.240 are examples and do not define all activities that constitute labor.

With respect to 11 AAC 86.220(h), we request that the added language be deleted. The postmark requirement is arguably inconsistent with the preceding sentence which requires that the payment be *received* on or before September 1. Furthermore, the delivery deadline is unduly harsh as once deposited in the mail, the sender has no control over whether the mail is timely routed and delivered to the department. Finally, the United States Postal Service has become increasingly unreliable over time and AMA does not believe it is helpful to miners to indicate that mailing payment on the due date is an acceptable practice.

Proposed new 11 AAC 220(i), requiring excess labor to be described on a “previous, timely recorded statement of annual labor,” has created confusion among our members. We have concluded that the intent and meaning of this proposed provision is unclear and unnecessary. SB 155 did not change how carry forward labor is to be reported. We request that this newly proposed subsection be deleted.

To the extent it is advisable to clarify the end of the annual labor year, we recommend revising 11 AAC 86.220(a) rather than adding new subsection (k) to essentially restate what is already in (a). We do not believe such clarification is needed, however, and recommend that subsection (k) simply be deleted. Exhibit A shows how this could be added in subsection (a) if the department finds it necessary to do so.

We propose deleting subsection (1). One purpose of the notice and cure provision in the statutory amendments was to discourage overstaking due to technical defects in AOLs. Inviting potential overstakers to report defects in an attempt to have claims invalidated is inconsistent with the spirit and intent of the statutory amendments.

A new subsection should be added to clarify that “held in common” means under common control. Common control can be by any combination of outright ownership, leases, option agreements, earn-in or exploration agreements, joint ventures, or any other arrangements that authorizes a person to engage in mineral activities on certain lands. Such provision should also clarify that labor done on any portion of the area held in common shall constitute labor for the entire area that is held in common. In other words, labor performed on private lands may be labor for adjoining state claims, and federal claims that adjoin the state claims but not the private lands, so long as all are held in common.

11 AAC 86.223

The definition of “successor in interest” should be clarified to exclude owners of royalties or other non-possessory interests. The current language is unclear and created a long-standing issue for the mining community. The simple addition of the word “possessory” will provide the needed clarification.

We do not understand or agree with the decision to redefine a “successor in interest” as any entity that held any interest and eliminate the majority ownership requirement in 86.223(3). SB 155 does not mandate such change and AMA members are not aware of any reason to make this change. The term “person” includes corporations and other business entities so the change to subsection (2) is not needed.

11 AAC 88.185(38)

We request that you delete proposed 11 AAC 88.185(38) defining a “qualified expert.” This term is already defined in statute at AS 38.05.242(6). Under the statute, the miner conducting the survey bears the risk of whether their expert is sufficiently qualified. This system has worked fine to date and nothing in SB 155 mandates any change. Shifting to DNR the responsibility to assess qualifications of individuals is an unnecessary administrative burden on the agency and a potential scheduling issue for explorers who will have to wait for DNR to approve that an expert in charge of an assessment work program is qualified to conduct or supervise geological, geophysical, or airborne survey work.

Thank you for this opportunity to comment. If you have a need to discuss our comments with us, we will be happy to do so.

Sincerely,



Deantha Skibinski
Executive Director

Alaska Miners Association: EXHIBIT A

Chapter 86
Mining Rights

Article 1
General Provisions

11 AAC 86.100. Applicability The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.185 - 38.05.275, and AS 38.05.880.

11 AAC 86.105. Discovery defined "Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine.

11 AAC 86.106. Deferral of rent for annual rental year beginning September 1, 1989 Repealed.

11 AAC 86.107. Payments and refunds (a) All payments required under this chapter, except for production royalty payments described in 11 AAC 86.769, may be made either by mail or in person as provided in this section. (b) The proper office for payment made by mail is the financial office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site location, other than a converted MTRSC location established under 11 AAC 86.250, may be mailed to the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department. (c) The proper office for payment made in person is either the Anchorage or Fairbanks office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site location, other than a converted MTRSC location established under 11 AAC 86.250, may be paid at the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department. (d) If a rental payment is received in an amount in excess of that due for a location, the department will credit the excess amount to rent that might become due for that location, unless a refund is requested. The department will refund the excess amount only if it receives a written request for the refund within 90 days after the date of payment. (e) A rental payment received for a closed location does not convey mineral rights to that location. The department will refund a payment received for a closed location if it receives a written request for a refund within 90 days after the date of the payment. (f) The department may not refund a rental payment except as provided in (d) and (e) of this section. (g) The department may not make a refund of a cash payment of annual labor.

11 AAC 86.108. Notices (a) Any decision or deficiency notice given to a locator under the provisions of this chapter will be made in writing and delivered in person or mailed by certified mail, return receipt requested, to the address of the current owner of the location as shown on the records of the division of mining. Other notices and letters from the department will be delivered in person or sent by first class mail or certified mail to the locator's current address of record. (b) For purposes of this chapter, the department will consider delivery by certified mail to occur when the receipt is signed. If the addressee neglects or refuses to sign for certified mail, the department will consider delivery to occur when the notice is deposited in a United States post office addressed to the person's current address of record with the department. (c) A locator must inform the department of the locator's most recent, or permanent, mailing address. The department will make changes to a locator's address of record upon receipt of a written request by the locator.

11 AAC 86.110. Existing mining claims, federal leases and permits Nothing in 11 AAC 86 and 11 AAC 88 adversely affects the continued validity of any lease, permit, license, location, or contract, or any rights arising thereunder, granted or issued by the United States, or any rights acquired or being exercised pursuant to the mining laws of the United States, before the land was acquired by the State of Alaska.

11 AAC 86.115. Locations on state-selected land (a) A location made on state-selected land that has not been conveyed to the state by the federal government through tentative approval or patent is made at the locator's risk. Because the state does not have management authority over the land unless the selection has been conveyed and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities. (b) A location made on state-selected land in accordance with this chapter creates prior rights against subsequent locators, and becomes a mining claim, leasehold location, or prospecting site when the federal government conveys the selection to the state through tentative approval or patent, whichever occurs first. If the conveyance restricts or bars the location, or a state mineral closure is in effect for all of the lands within the location on the date of the conveyance, the location made on state-selected land will be void. If a state leasing restriction is in effect on the date of the conveyance, a location made before the conveyance is subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of the conveyance, a valid location that was made before the conveyance is unaffected. (c) If only a portion of the area of a mining location on state-selected land is conveyed to the state, only the portion of the mining location that is on the land conveyed becomes a mining claim, leasehold location, or prospecting site. The portion of the area of the location on the state-selected land that is not conveyed continues as a mining location on state-selected land without further action by the locator, to which the department will assign a unique location number. (d) The provisions of AS 38.05.210 - 38.05.240 do not apply to locations made on state-selected land until the state receives the conveyance of the selection from the federal government. The first labor year for a mining claim or a leasehold location made on state-selected land begins at noon on the first September 1 after the date the federal government conveys the selection. For the purpose of determining the amount of annual rent, a location on state-selected land is considered to have been first located on the date the federal government conveys the selection through tentative approval or patent, whichever occurs first. (e) The first annual rental year for a location made on state-selected land begins on the date of conveyance of the selection to the state by the federal government and ends at noon on the following September 1. The first annual rental payment is due on the date of conveyance and must be paid within 90 days after that date. It is the locator's responsibility to determine the date of conveyance. In accordance with 11 AAC 86.107 and 11 AAC 86.215(f), the locator may make a one-time, non-refundable deposit of \$25 for each location made on state-selected land. If the state receives conveyance to the selection, the department will credit the deposit to the first rental payment that becomes due for the location. In the event the rental deposit amount should ever change, the previous one-time nonrefundable deposit amount does not have to be adjusted so the amount is the same as the new rental deposit amount. A location made on state-selected land that is conveyed to the state by the federal government shall be deemed abandoned under AS 38.05.265 if the department has not received the rental payment or rental deposit for the location within 90 days after the department notifies the locator of the conveyance of the selection. (f) Written and recorded permission to locate a mining claim on state-selected land located within an active unpatented federal mining claim, as required by AS 38.05.275(a), must be notarized and include the following information:

(1) the full name of the person or persons, who shall be qualified to locate state mining claims under AS 38.05.190, that posted the location on the state-selected location;

(2) the full name of all owners of possessory interests in the active unpatented federal mining claims affected by the location;

(3) the claim numbers, and names of the federal claims; and

(4) a signed statement from the federal claim holders authorizing the locator to place the state-selected location within the active unpatented federal mining claim. If simultaneously recording certificates for contiguous locations, the locator may attach the signed statement of permission from the federal claim holders to a single certificate of location and shall cross-reference that certificate of location on each other certificate of location to which the statement of permission applies. Any location certificate on state-selected land within an active unpatented federal mining claim that does not include a signed statement

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of permission or a cross-reference to a certificate of location to which an applicable statement of permission is attached is void.

11 AAC 86.120. Conditional mining leases and locations Repealed 5/18/90.

11 AAC 86.121. Qualifications. ~~Exploration and mining rights on state land may be acquired or held by persons qualified under AS 38.05.190.~~

(a) In order to remain qualified, ~~the person must cure any defect as provided in AS 38.05.190(b) – (f), either before or after notice from the department but within the time set forth in AS 38.05.190(b) – (f).~~

(b) A declaration by the department that a mineral interest is void due to failure to ~~timely cure a defect in qualification~~ results in the unqualified person losing all rights to exploration or mineral interests; that person may become qualified or requalify pursuant to AS 38.05.190(b) or (e), at which point that person may acquire or hold new rights in exploration or mining interests pursuant to AS 38.05.185 – 38.05.275, as associated regulations.

(c) The department may request proof of qualification under AS 38.05.190 ~~at any time.~~

(d) ~~A mineral interest on state land in which an unqualified person holds a possessory interest as a tenant in common with others, under a lease from one or more claim owners, or any other circumstance where the unqualified person is not the only holder of possessory rights with respect to the mineral interest, and who fails to cure the defect in qualifications as provided in AS 38.05.190(b) – (f), shall not be invalidated. In cotenancies, the department may declare the unqualified person's interest invalid and the interests held by the unqualified party distributed to the other owners in proportion to their interests calculated as follows: each other owner acquires that portion of the interests of the unqualified person derived by multiplying the interests held by a fraction in which the denominator is the sum of all the interests held by others and the numerator is the acquiring owner's interest. For example, if the interests of a 25% owner are to be distributed to co-owners who held 50% and 25% respectively, before the distribution, the 50% owner will receive 50/75ths of the 25% interest being distributed and the 25% owner will receive 25/75ths of the 25% interest being distributed.~~

11 AAC 86.125. Failure to comply (a) The failure on the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate the mining lessee's or locator's rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that conflicting rights are not asserted by another person. Upon written application, the director may issue a certificate of substantial compliance that sets out the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not specifically referred to in the certificate. The certificate becomes effective when recorded in the recording district where the located or leased land is located. (b) An application for a certificate of substantial compliance must include the name and address of the mining lessee or locator, the name of the location or lease, any serial number assigned by the department to the location or lease, an application fee as set out in **11 AAC 05.120(b)(1)(N)**, a statement of the specific failure to comply the reasons for the failure, and any other information the director considers necessary to determine the circumstances of the case.

11 AAC 86.130. Filing and recording Repealed 12/31/82.

11 AAC 86.135. Mineral deposits open to location (a) Rights in and to deposits of locatable minerals, except on tide and submerged land as specified in (c) of this section, may be acquired by making a mineral location in conformance with **AS 38.05.185** - 38.05.275 and **11 AAC 86**, unless the deposits are in or on state land that is closed to location. To constitute a valid location, both discovery and posting of the location notice

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→(2) trusts shall at all times comply with requirements of AS 38.05.190(a)(6), and the failure to do so may result in a declaration by the department that the mineral interest is void in accordance with AS 38.05.190(b)-(f); and ¶
→(3) all members of an association described by AS 38.05.190(a)(7) shall maintain individual qualifications at all times, and the failure to do so may result in a declaration by the department that the mineral interest is void in accordance with AS 38.05.190(b)-(f).

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→(1) the name and address of the person or persons whose qualifications are being challenged as deficient; ¶
→(2) any information that supports the basis for a defect in qualification status; and ¶
→(3) the name and address of the person alleging the deficiency in qualification status.

must occur during a time when the land is open to location. (b) This section constitutes the commissioner's finding, in accordance with [AS 38.05.185\(a\)](#), that selling or leasing of land, or conveying land under [AS 29.65.010](#) - 29.65.140 or [AS 38.05.810](#), other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land remains open to location, a location made on that land after the sale, lease, or conveyance is a leasehold location. (c) Rights in and to deposits of locatable minerals on tide and submerged land may be acquired only under the provisions of [AS 38.05.250](#) and [11 AAC 86.500](#) - [11 AAC 86.570](#), except that tide and submerged land may be included in a location under [AS 38.05.195](#) if two corners are on or above the line of mean high tide. (d) If the land upon which a location is made is restricted to mining under lease before the discovery date or the date the location notice was posted, the locator has prior rights only to a leasehold location under [AS 38.05.205](#). (e) Notice will be given under [AS 38.05.945](#) before an order closing land to mining or mineral location or restricting it to mining under lease is issued, amended, or revoked.

11 AAC 86.140. Drawing of prior existing locations. The requirement under [11 AAC 86.210\(4\)](#), [11 AAC 86.215\(a\)\(7\)](#), [11 AAC 86.410\(a\)\(4\)](#), and [11 AAC 86.410\(b\)\(6\)](#) that a locator show the relationship of his location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for informational purposes only. It is not an admission by the locator of the proper location and maintenance, good standing, or validity of those other claims, locations, or sites.

11 AAC 86.145. Surface use (a) The following provisions apply to land for which the state owns the surface: (1) A locator does not have exclusive use of the surface of the location. A locator may use the surface of the location only to the extent necessary for the prospecting for, extraction of, or basic processing of mineral deposits. A locator may not restrict public access to or other uses of the surface unless approved in writing by the director. The director may allow the locator to restrict public access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator. (2) The building, placing, or use of surface structures or other surface improvements, including airstrips and roads, within the boundaries of a mining property must be approved by the director in writing through a plan of operations, land use permit, or other written authorization. The director will only approve surface structures or other surface improvements that are necessary to carry out authorized operations. Factors to be used by the director in approving the surface structures, other surface improvements, or uses include: access to the property, remoteness of location, security of the operations, planned level of operations, existing authorized surface uses, and the current level of activity. (3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for purposes of [AS 38.05.255](#). The division of forestry must be contacted before using or clearing timber from timberlands. (4) The director may require documentary evidence of mining activity to support a request for surface use. Failure to provide documentary evidence when required by the director is grounds for denial of the requested surface use. At the request of a person making a request for surface use, the department will keep confidential the cost data and financial information submitted by the person, but the person must clearly identify the cost data and financial information and separate it from information not qualifying under [AS 38.05.035\(a\)\(9\)](#) for confidential treatment. (b) If the surface estate or interests in the surface estate are owned by a third party with the minerals reserved to the state under [AS 38.05.125](#), the locator must make provisions under [AS 38.05.130](#) to pay the owner of the surface estate or surface interests for any damage that may be caused by the use or development of that location. If the locator and the owner of the surface estate or interests are unable to reach agreement concerning the provision for payment of damages, the locator may enter the land in the exercise of the locator's right to use or develop the minerals reserved under [AS 38.05.125](#) after a determination by the director that the proposed activities are necessary for the locator to exercise the rights reserved under [AS 38.05.125](#), and after posting a surety bond determined by the director under [AS 38.05.130](#). A locator who wishes to enter the land in this manner shall provide information requested by the director so that the director may make each of the determinations required by this subsection. The locator shall also comply with requirements for a reclamation plan and bond under [AS 27.19.010](#) - 27.19.100 and [11 AAC 97.010](#) - [11 AAC 97.640](#).

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11 AAC 86.150. Plan of operations instead of land use permit A person intending to conduct mineral exploration or development activities that would require a land use permit under [11 AAC 96](#) may file a plan of operations for approval instead of applying for a land use permit. The plan of operations must meet the requirements of [11 AAC 86.800](#).

11 AAC 86.155. Sale, lease, or other transfer (a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. The sale, lease, or other transfer document must be recorded in the district recorder's office for the recording district in which each transferred mining location is located, and the transfer document must include: (1) for a sale, lease, or transfer that is made on or after 8/26/98, the word "mining" in the title of the document; (2) the claim name of each location; (3) the ADL number (if assigned) for each location; (4) every section, township, range, and meridian in which each transferred mining location is located; (5) the current mailing address of each party to the transfer; the department will change the owner of record for a mining location on its records if a transfer document containing the information above is recorded. (b) The failure to comply with the provisions of (a) of this section does not affect the validity or enforceability of the sale, lease, or transfer of a right or interest described in (a) of this section between the parties to the sale, lease, or transfer. (c) Before a portion of a mining location may be sold or granted, the original location must be physically divided by amending it to reduce its size. A new location must be created on the remaining ground in accordance with this chapter. The original discovery and location dates apply only to the amended location and not to the newly created location. Any sale or grant of rights under either the amended location or the new location must comply with (a) of this section.

11 AAC 88.185. Definitions

11 AAC 88.185 is amended adding new paragraphs to read:

~~(38) "qualified expert" means a professional geologist certified under AS 08.02.011, or certified under the applicable occupational licensing statute and regulation of Register, 20 NATURAL RESOURCES 11 another state, Canada, or Australia, who is qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be. A person without the requisite certification may submit a written request to be recognized as a qualified expert to the department based on alternative training or work experience, which the department may approve.~~

~~(39) "state-selected lands" has the meaning as defined by AS 38.05.275(b).~~

Article 2

Staking, Recording and Maintaining Claims and Leasehold Locations

11 AAC 86.200. Discovery required No mining claim or leasehold location is complete until after the discovery, as defined in [11 AAC 86.105](#), of locatable minerals within the limits of the location.

11 AAC 86.202. MTRSC and traditional mining claims and leasehold locations (a) An MTRSC is a claim located as provided in [AS 38.05.195\(b\)\(1\)](#) and this chapter. An MTRSC leasehold location is a leasehold location located as provided in [AS 38.05.195\(b\)\(1\)](#), [AS 38.05.205](#), and this chapter. (b) A traditional mining claim is a claim located as provided in [AS 38.05.195\(b\)\(2\)](#) and this chapter, and means the same as a non-MTRSC location, as that term is used in [AS 38.05.195\(b\)\(2\)](#). A traditional leasehold location is a leasehold location located as provided in [AS 38.05.195\(b\)\(2\)](#), [AS 38.05.205](#), and this chapter. (c) A traditional location is a traditional mining claim or a traditional leasehold location. ▼

11 AAC 86.205. Marking locations The locator of a mining claim or leasehold location shall designate the location by erecting at each corner of the location substantial monuments of stone or setting posts, not less

Deleted: (d) Claims or leasehold locations posted per the requirements of AS 38.05.195(b)(1) and (2) must clearly show the actual boundaries of the claim by showing what lands are being claimed and those non-state lands and existing mineral rights within the claim to be excluded from the claim or leasehold location boundaries.

than three feet in height, not less than two and one-half inches in diameter, and hewn and marked with the name of the location and the number of the monument, beginning with number 1 at the northeast corner and proceeding in a clockwise direction around the location. Where it is impracticable to place a monument in its true position, a witness monument must be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used.

11 AAC 86.210. Attaching location notice. The locator of a mining claim or leasehold location shall personally, or through an agent, attach or post a notice on the monument at the northeast corner of the location. The notice may be in any form, including as a metal tag. The notice must include (1) the name or number of the mining claim or leasehold location; (2) the date of posting the notice of location; (3) if the mining claim or leasehold location is (A) a traditional location, the length and width of the mining claim or leasehold location in feet; or (B) an MTRSC location, the meridian, township, range, section, and quarter- or quarter-quarter-section of the mining claim or leasehold location; (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the mining claim or leasehold location to adjoining and contiguous mining claims, leasehold locations, and prospecting sites; and (5) the name and current mailing address of each locator.

11 AAC 86.215. Certificate of location and first rental payment. (a) Within 45 days after the date of posting of the notice of location, a locator shall record a certificate of location in conformance with [AS 38.05.195](#). The certificate of location must be recorded in the recording district in which the location is situated, on a form approved by the department or on a substantially similar form meeting the recording requirements of [11 AAC 06.040](#), and must include (1) the name or number of the location; (2) the dates, including the month, day, and year, of both the locator's discovery and posting of the notice of location; (3) for a traditional location, the length and width of the location in feet, and each meridian, township, range, section, quarter-section, and quarter-quarter section in which the location is situated; (4) for an MTRSC location, the meridian, township, range, section, quarter-section, and if applicable the quarter-quarter-section of the location; (5) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent; and, if the location is made on behalf of a trust, the name and mailing address of at least one trustee who is a person described in [AS 38.05.190\(a\)\(1\)-\(5\)](#); (6) the name of the recording district in which the location is situated; and (7) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the surveyed section line or, if unavailable, the protracted section lines surrounding the location, and, to the best of the locator's knowledge, the relationship of the location to adjacent or contiguous mining claims, leasehold locations, mining leases, prospecting sites, mineral orders, and non-state land; if simultaneously ~~recording~~ contiguous locations, a single map showing all locations may be attached to one of the certificates of location and that certificate must be cross-referenced on each other certificate of location to which the map applies. (b) Failure to record a certificate of location within the time specified in (a) of this section, constitutes an abandonment of the claim or leasehold location under [AS 38.05.265\(a\)](#). (c) Repealed 5/30/85. (d) Repealed 5/30/85. (e) Repealed 5/30/85. (f) The first annual rental payment for a new location on state land is due within 45 days after the date of posting of the notice of location. The first annual rental payment for a location on state-selected land is due on the date the federal government conveys all or a portion of the land within the location to the state, must be paid within 90 days after that date, and must be paid as provided in [11 AAC 86.107](#). A rental payment for a new location must be submitted as provided in [11 AAC 86.107](#) and must be accompanied by a copy of the certificate of location, whether or not it has been recorded. The first rental payment for a location on state land will be considered as rent for the period from the date of posting to noon of the following September 1. Before the date of conveyance, a locator may submit a payment and certificate of location for a location on state-selected land. As provided in [11 AAC 86.115](#), the payment will be considered a non-refundable deposit credited to the first rental payment if the selection is conveyed to the state. (g) Locations posted under [AS 38.05.195\(b\)](#) that include both [lands open to location and lands available only for a leasehold locations will be subdivided by the department](#) and assigned separate and distinct location numbers for each type of location.

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11 AAC 86.220. Annual labor (a) Except as provided in 11 AAC 86.115, the first labor year begins at noon on the first September 1 following the date a location notice is posted under 11 AAC 86.210. Each subsequent annual labor year begins at noon on September 1 and ends at 11:59 am on the following September 1. A location that is located on September 1 will be considered to have been located after noon on that day. (b) Examples of qualifying labor are set forth in AS 38.05.240. Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. (d) A statement of annual labor required by this section must be made before any officer authorized to administer oaths, or, when no official empowered to administer oaths is available, in the manner provided by AS 09.63.020. (e) Repealed 5/30/85. (f) Repealed 5/30/85. (g) A statement of annual labor may be corrected or amended under AS 38.05.210. (h) A cash payment made instead of performing annual labor must be received by the department as provided in 11 AAC 86.107 and must be received by the department on or before September 1st of each year. The payment must be accompanied by a copy of the statement of annual labor or a statement containing the name and ADL number for the mining claim, leasehold location, or mining lease for which the payment is made. If cash payment is asserted in a statement of annual labor but is not paid by the end of the labor year, the mining claim or leasehold location will be considered abandoned under AS 38.05.265. A locator who makes a cash payment in lieu of annual labor for one or more years must also record an affidavit of annual labor under AS 38.05.210 for each year for which a cash payment is made. A cash payment will be accepted for only one labor year at a time.

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(i) For purposes of AS 38.05.210, "held in common" shall mean under common control. Common control may result from any combination of outright ownership, lease, option, earn-in arrangement, exploration agreement, joint venture, or any other arrangement by which a party has the right to conduct operations to explore for, develop, or mine minerals. Labor performed on or for the benefit of any portion of the minerals held in common may be used to satisfy the labor requirement for all portions of the area held in common.

Deleted: In order to apply the excess value of labor performed or new improvements made under AS 38.05.210(a) during a mining labor year to a subsequent year or years, for up to four consecutive years, the excess labor performed or improvements made must be described on a previous, timely recorded statement of annual labor.

(j) The owner of a mining claim, leasehold location, or mining lease may apply any combination of excess carry over labor, actual performed labor recorded, and cash payment to the state equal to the value of labor required to meet the minimum annual labor requirements. The cash payment equal to the value of labor required must meet the requirements of (h) of this section, and is the carry forward labor and cash payment in lieu are subject to the respective four and five-year limitations on use of excess carry over labor value and cash payments under AS 38.05.210(a).

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11 AAC 86.221. Annual rental (a) A rental payment for a mining claim or leasehold location must be made in accordance with 11 AAC 86.107. The first rental payment for a new location must be made in accordance with 11 AAC 86.215(f). Each subsequent payment must be accompanied by a rental form provided by the department, a photocopy of that form, or a rental form approved by the director. The rental form must contain the name and address of the owner of record and the name and ADL number of the claim or leasehold location. The department will, in its discretion, refuse to accept a payment submitted without the required information. (b) Except as provided in (f) of this section, the amount of the annual rental payment is based on the number of years since a mining claim or leasehold location was first located, as follows: Number of Rental Amount for Rental Amount Years Since Each Quarter- for Each for Each First Section Size Quarter-Traditional Located MTRSC Quarter- Mining Claim Location Section Size or Leasehold MTRSC Location Location 0-5 \$165 \$ 40 \$ 40 6-10 \$330 \$ 85 \$ 85 11 or more \$825 \$205 \$205 (c) For purposes of determining the amount of annual rental, a claim or leasehold location located on state land on or before August 31, 1989, is considered to have been first located on August 31, 1989, and the first rental year for such a claim or leasehold location is considered to have begun at noon on September 1, 1989. The first rental year for a claim or leasehold location located on or after September 1, 1989, begins on the date of posting location and ends at noon on the following September 1. The first rental year for a claim or leasehold location located on state-selected land begins on the date the federal government conveys the land to the state and ends at noon on the following September 1. A claim or leasehold location located on any September 1 will be considered to have been located after noon on that day. (d) The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30. (e) If a locator fails to make a timely rental

Deleted: (k) Consistent with (a) of this section, a mining labor year begins at noon on September 1 of a given year and ends the following year on September 1 at 11:59 am.¶
(l) A person, other than the department, who believes a deficiency exists in a statement of annual labor, and who wishes to report that information to the department for the purpose of AS 38.05.210(g), shall do so by submitting a signed, written statement to the department that includes the following information:¶
→(1) the names and numbers of the mining claims or leasehold locations being challenged as having deficient statements of annual labor;¶
→(2) the name and address of the claim owner or owners;¶
→(3) the year, document number, and recording district of the statement of labor being challenged;¶
→(4) a description of the believed deficiency on the statement of annual labor that may result in invalidity of the claim or claims; and¶
→(5) the name and address of the person alleging the deficiency in the statement of annual labor.¶

payment, the claim or leasehold location will be considered abandoned under [AS 38.05.265](#). If a rental payment is timely submitted to the department, but the director determines that the payment is less than the amount due, the locator will be granted 30 days after a deficiency notice is delivered under [11 AAC 86.108](#) to submit the additional rental due. In the deficiency notice, the department will advise the locator that if full payment is not received within the 30-day period, the deficient payment will be applied until exhausted to the claims and leasehold locations with the lowest ADL numbers. The claims and leasehold locations with the remaining ADL numbers for which rent was due and full payment not received will be considered abandoned without further notice. (f) The following additional rules apply to a rental determination: (1) for the rental year following the year in which a new MTRSC location is established, the new MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size of the new MTRSC location; (2) for the rental year following the year in which a traditional location is converted to an MTRSC location, the converted MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size and rental age of the converted MTRSC location as determined under [11 AAC 86.260](#); (3) if a traditional location is converted into an MTRSC location, the annual rental for the converted MTRSC location is based on its size and its rental age as determined under [11 AAC 86.260](#); (4) the annual rental for a location established by a locator or a locator's successor in interest under the circumstances described in [11 AAC 86.223\(c\)](#) or (d) is based on the location's size and on the number of years since the relinquished or existing location was first located.

11 AAC 86.223. Abandonment, relinquishment, and relocation (a) For purposes of [AS 38.05.265](#) and this section, a "successor in interest" to a locator or claimant means (1) the spouse, child, sibling, or parent of the locator or claimant; (2) ~~a person or association, described in AS 38.05.190(a) that owned a possessory interest in the locator's or claimant's location; or (3) an entity described in AS 38.05.190(a)(6) that owned a possessory interest in the locator's or claimant's location, but only if a majority of the ownership of the entity is held by a person or association described in (1) or (2) of this subsection.~~ (b) A locator may not include in a new location any part of a mining claim or leasehold location abandoned under [AS 38.05.265](#) less than a year ago by that locator or by a person to whom the locator is a successor in interest, regardless of whether the abandoned location was an MTRSC or a traditional location. (c) The posting date for a relinquished MTRSC or traditional location will be used as the date for determining the rental owed under [11 AAC 86.221\(b\)](#) for a new traditional location, a new MTRSC location, or a traditional location that is converted to an MTRSC location under [11 AAC 86.250](#) - [11 AAC 86.255](#) if (1) the relinquished location is relinquished under circumstances not constituting abandonment under [AS 38.05.265](#); (2) within a year after relinquishing the relinquished location, its former owner or a successor in interest posts the new traditional location, the new MTRSC location, or the converted MTRSC location; and (3) the new traditional location, the new MTRSC location, or the converted MTRSC location includes any part of the relinquished location. (d) If a locator posts an MTRSC location over an existing location, and is the locator of or a successor in interest to the locator of the existing location, the new location will be considered to be a converted MTRSC location that is subject to [11 AAC 86.250](#).

11 AAC 86.225. Service of notice on co-owners The service of written personal notice authorized by [AS 38.05.215](#) shall be made by certified mail only.

11 AAC 86.230. Recordation of sale, lease, or other transfer Repealed 5/30/85.

Article 3 Converted MTRSC Locations

11 AAC 86.250. General principles for conversion of a traditional location to a converted MTRSC location One or more traditional mining claims or leasehold locations may be amended at any time to establish one or more converted MTRSC locations. The following rules apply to a conversion: (1) all or part of a traditional location may be included in the converted MTRSC location; each converted MTRSC location must be supported by a discovery somewhere within its boundaries; (2) if only part of a traditional location is included in the converted MTRSC location, the remaining part may be either relinquished or relocated as an

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amended location; (3) a converted MTRSC location does not establish locatable mineral rights to an area outside the traditional location if that area is not open to location; (4) conversion of a traditional location to a converted MTRSC location is not complete unless the annual rental due on the traditional location for the year in which the conversion occurs is timely paid in full; the failure to timely pay the required rental on the traditional location results in abandonment of both the converted MTRSC location and traditional locations under [AS 38.05.265](#).

11 AAC 86.255. Certificate of location for a converted MTRSC location In addition to marking the location as required by [11 AAC 86.205](#) and attaching a notice of location as required by [11 AAC 86.210](#), a locator establishing a converted MTRSC location must record a certificate of location within 45 days after posting the converted MTRSC location. The certificate of location must be recorded in the recording district in which the converted MTRSC location is situated, on a current form approved by the department for conversions or on a substantially similar form meeting the recording requirements of [11 AAC 06.040](#), and must include (1) the location name or number of the converted MTRSC location, and the meridian, township, range, section, and quarter- or quarter-quarter-section of the location; (2) for each traditional location being converted to the MTRSC location, the ADL number, if assigned, location name, discovery date, posting date, and (A) original book and page of recording; or (B) recording office serial number; (3) the name of the recording district in which the converted MTRSC location is situated; (4) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent; (5) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the converted MTRSC location and each existing location being converted, the dominant physical features of the land, the protracted or surveyed section lines surrounding the converted MTRSC and existing locations, and, to the best of the locator's knowledge, the relationship of the locations to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if the converted MTRSC location is being recorded simultaneously with one or more contiguous converted MTRSC or new locations, a single map showing all locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and (6) proof of ownership transfer, if the locator of the converted location is not the owner of record of each existing location being converted; that proof must be filed with the certificate of location.

11 AAC 86.260. Rental age of a converted location For purposes of establishing the annual rental owed under [11 AAC 86.221](#), the rental age of a converted MTRSC location is the number of years since the first posting of the traditional location from which the MTRSC location was converted. If more than one existing traditional location is used to establish a converted MTRSC location, the rental age of the converted location is the average of the rental ages of the existing traditional locations, then rounded to the nearest whole year. For purposes of calculating that average, (1) if a converted quarter-section MTRSC location includes fewer than four existing traditional locations, the department will count each existing location's rental age as only 25 percent of the average; additional imaginary locations, each assumed to be one year old and each counting as 25 percent, will be added to the average to reach 100 percent; the average age will then be rounded to the nearest whole year; and (2) the rental age of a relinquished location, as determined by that location's posting date, will be included in calculating a converted MTRSC location's rental age if the converted MTRSC location (A) includes any part of the relinquished location; (B) is established less than a year after the relinquishment; and (C) is established by the locator of the relinquished location or by that locator's successor in interest under [11 AAC 86.223](#).

11 AAC 86.265. Credit or deficiency in payment of rental on a converted location (a) The annual rental paid in the year of conversion on an existing location included in whole or in part in a converted MTRSC location will be credited as a timely payment to the first-year rental owed on the converted MTRSC location. If parts of the existing location are included in more than one converted MTRSC location, the department will allocate the rental payment equally to the first-year rental owed on each converted MTRSC location. If a deficiency exists, the department will mail a deficiency notice to the locator as provided in [11 AAC 86.221\(e\)](#) to permit payment of the balance owed. If an excess exists, it will be credited to rent owed for the converted MTRSC location in the second and subsequent rental years until exhausted. If a deficiency is not cured in

accordance with notice from the department, the (1) converted location will be considered abandoned under [AS 38.05.265](#); and (2) department will consider the traditional location from which the abandoned location was converted to continue in force and be subject to this chapter as if the conversion had not occurred. (b) The annual rental owed on a converted MTRSC location in the next and subsequent rental years following the year of conversion is due and payable in accordance with [11 AAC 86.221](#). From the rental owed on a converted MTRSC location in the rental year following the year of conversion, the department will deduct the 50 percent discount described in [11 AAC 86.221\(f\)\(2\)](#), together with any credit for overpayment of first-year rental. The overpayment credit, if any, and the 50 percent rental discount are considered timely partial payment toward the second-year rental.

[11 AAC 86.270. Labor obligation on a converted location](#) The labor obligation required to be met in the year that an existing location is included in a converted MTRSC location must still be satisfied and is subject to [AS 38.05.265](#) as if a conversion had not occurred.

[11 AAC 86.290. Definitions](#) In [11 AAC 86.250](#) - [11 AAC 86.290](#), unless the context requires otherwise, (1) "conversion" means the amendment of one or more traditional mining claims or traditional leasehold locations to establish an MTRSC location; (2) "converted MTRSC location" means an MTRSC location established by means of a conversion.