

Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

11 AAC 86.115 is amended to read:

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 **and is an “at-risk mining location”**. **An at-risk mining location is subject to existing claims and to a denial of or restriction in** [BECAUSE]**the tentative approval of the** state **selection or patent of** [DOES NOT HAVE MANAGEMENT AUTHORITY OVER]the land **to** [UNLESS]the **state** [SELECTION HAS BEEN CONVEYED AND CANNOT AUTHORIZE EXPLORATION WORK OR MINING UNTIL THAT TIME, THE]. **The** locator is responsible for **getting** [OBTAINING]any necessary permits from the federal land manager and other permitting authorities.

(b) **An at-risk mining** [A]location made [ON STATE-SELECTED LAND]in accordance with this chapter **initiates** [CREATES]prior rights against subsequent locators [AND BECOMES]**but does not become** a mining claim, leasehold location, or prospecting site

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until [WHEN]the federal government conveys the selection to the state through tentative approval or patent, whichever occurs first. **An at-risk mining location will become void if** [,UNLESS]the conveyance restricts or bars the location, or [UNLESS]a state mineral closure is in effect on the date of the conveyance. If a state leasing restriction is in effect on the date of the conveyance, **an at-risk mining** [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, **the state mining claim, leasehold location or prospecting site will not be affected by the subsequent closure or restriction** [A VALID LOCATION THAT WAS MADE BEFORE THE CONVEYANCE IS UNAFFECTED].

(c) If only a portion of the area of **an at-risk** [A]mining location on state-selected land is conveyed to the state, only the portion of the **at-risk** mining location that is on the land conveyed becomes a **state** mining claim, leasehold location, or prospecting site. The portion of the **at-risk mining** [AREA OF THE]location on [THE]state-selected land that is not conveyed continues as **an at-risk** [A]mining location on state-selected land without further action by the locator.

(d) The provisions of AS 38.05.210 - AS 38.05.240 do not apply to at-risk mining 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 **on** [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, **an at-risk mining** [A]location [ON STATE-SELECTED LAND]is

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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 **an at-risk mining** [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 **midnight Alaska Time** [NOON ON]the following **August 31**[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. **For an at-risk mining** [A]location made on state-selected land that **has been subsequently** [IS]conveyed to the state by the federal government, **failure to make** [CONSTITUTES AN ABANDONMENT OF THE LOCATION UNDER AS 38.05.265 IF THE DEPARTMENT HAS NOT RECEIVED]the rental payment[OR RENTAL DEPOSIT] for the location **not later than** [WITHIN]90 days after conveyance of the selection **constitutes an abandonment under AS 38.05.265 of the at-risk mining location.**

11 AAC 86.115 is amended by adding new subsections to read:

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(f) The posting date and fulfillment of requirements of 11 AAC 86.200 - 11 AAC 86.215(a) and (b) determines the priority of overlapping at-risk mining locations. The earliest successful at-risk locator who fulfills the requirements of 11 AAC 86.200 - 11 AAC 86.215(a) and (b) has priority against overlapping or conflicting at-risk locator until the location is relinquished.

(g) The department will not adjudicate at-risk mining location conflicts. Locators may seek to resolve conflicts privately or through quiet title action. (Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.195 AS 38.05.265
AS 38.05.185 AS 38.05.211 AS 38.05.275

11 AAC 86.135(a) is amended to read:

(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 - AS 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 MUST OCCUR DURING A TIME WHEN THE LAND IS OPEN TO LOCATION.]

(1) discovery must occur before posting a location notice;

(2) posting of the location notice must occur during a time when the land is open to location;

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(3) except as provided under 11 AAC 86.250 - 11 AAC 86.290 for converted MTRSC locations, land encompassed by an existing location whose existing locator has complied with the requirements of AS 38.05.185-275, and 11 AAC 86.100-221, is not open to discovery or posting of a location notice by another locator until the existing location is relinquished or abandoned under AS 38.05.275; and

(4) Any portion of a location that overlaps, in whole or in part, a location whose existing locator has complied with the requirements of AS 38.05.185-265, and 11 AAC 86.100-221 is void as of the date of posting. (Eff. 9/5/74, Register 51; am 5/30/85,

Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.205 AS 38.05.275

AS 38.05.185 **AS 38.05.265** AS 38.05.300

AS 38.05.195

11 AAC 86 is amended by adding a new section to read:

11 AAC 86.201. Qualifications. (a) Associations of persons under AS 38.05.190(a)(6) include:

(1) limited liability companies registered to do business in Alaska under AS 10.50.020 - AS 10.50.065 whose members consist of a combination of qualified persons described under AS 38.05.190(a)(1) - (5); and

(2) limited partnerships and limited liability partnerships registered to do business in Alaska under AS 32.11.010 - AS 32.11.090, AS 32.06.911 - AS 32.06.925, or

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AS 32.11.410 - AS 32.11.480 whose members consist of a combination of qualified persons described under AS 38.05.190(a)(1) - (5);

(b) A limited liability company, partnership, or other association of qualified persons shall, upon request of the department, submit:

(1) the name, address, and telephone number of each member and each manager of the limited liability company, partnership, or other association of qualified persons;

(2) the name, address, and telephone number of the principle contact for the limited liability company, partnership, or other association of qualified persons; and

(3) a copy of a statement of qualification, registration, or authorization required to be filed with the state under AS 10.06, AS 10.45, AS 10.50, or AS 32.06.

(c) The department reserves the right to check the validity of submissions under (b) of this section; the department's failure to review these submissions is not an affirmation that the submissions are valid;

(d) A corporation shall upon request by the department, submit the documents required by (b) of this section.

(e) Associations of persons identified in (a) of this section shall maintain their registration to conduct business in Alaska. Dissolution, revocation, expiration, or cancelation of the registrations of a limited liability company under AS 10.50.408 and 10.50.650; limited partnership under AS 32.11.030, 32.11.040, and 32.11.460; limited liability partnership under AS 32.06.913 will void all rights granted under AS 38.05.185 - AS 38.05.275.

(f) Corporations identified in AS 38.05.190(a)(5) shall maintain their corporation in good standing and qualifications to do business in Alaska. Dissolution, revocation, expiration,

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suspension or cancelation of a corporation under the laws of the of the United States or of the state under which the corporation was organized, or failure to maintain their qualifications to do business in Alaska will terminate all exploration and mining rights granted under AS 38.05.185 - AS 38.05.275.

(g) If an individual or entity is not qualified to acquire or hold mining rights pursuant to AS 38.05.190 and subsections (a)-(f) of this section at the time of location, the location is void and does not exist.

(h) If an individual or entity becomes unqualified to acquire or hold mining rights pursuant to AS 38.05.190 and subsections (a)-(f) of this section at any point in time that they “hold” a mining right, then the mining right is void, effective the date the individual or entity became unqualified.

(i) If an individual or entity is not qualified to acquire or hold mining rights pursuant to AS 38.05.190 and subsections (a)-(f) of this section at the time a mining right is conveyed to them, then the department will consider that the transaction did not occur as a non-qualified person or entity cannot acquire a mining right, and therefore the mining right remains with the transferor. (Eff. __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.190

11 AAC 86.215(a)(7) is amended to read:

(7) **traditional claims require** 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 protracted or surveyed

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section lines surrounding the location, and, to the best of the locator's knowledge, **the dominant physical features of the land**, the relationship of the location to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if more than one contiguous location is being recorded simultaneously, 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.

11 AAC 86.215(b) is amended to read:

(b) Failure to [FILE FOR]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.**

11 AAC 86.215(f) is repealed and readopted to read:

(f) The first annual rental payment for a new location on state land is due not later than 45 days after the date of posting the location notice. 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. The first rental payment for a location on state land will be considered as rent from the date of posting to midnight Alaska Time on the following August 31. Failure to pay the first annual rental payment will render the mining location void.

11 AAC 86.215 is amended by adding a new subsection to read:

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(g) The first annual rental payment for a location on state-selected land becomes due on the date the federal government conveys all or part of the land within the location to the state and must be paid not later than 90 days after that date. The rental payment must be submitted as provided in 11 AAC 86.107. The first rental payment for a conveyed state selected location will be considered rent from the date of conveyance to midnight Alaska Time on the following August 31 of the current mining year. Before the date of conveyance, a locator may submit a payment and certificate of location for a location on state-selected land. The payment will be considered as a non-refundable deposit credited to the first rental payment if the selection is conveyed to the state or as provided in 11 AAC 86.115. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 1/19/2002, Register 161; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.205 AS 38.05.265
AS 38.05.195 AS 38.05.211

11 AAC 86 is amended by adding a new section to read:

11 AAC 86.216. Overlapping or Conflicting Locations. (a) Where a location made on state-owned lands overlaps or conflicts with an existing location, in whole or in part, and where the owner of the existing locator has complied with the requirements of AS 38.05.185-275, and 11 AAC 86.100-221, that portion of the location that is overlapping or conflicting with the existing location is void.

(b) Where a location made on state-owned land overlaps or conflicts with an existing location, in whole or in part, and where it is unclear to the director whether the holder of a

conflicting location complies with the requirements of AS 38.05.185-275, and 11 AAC 86.100-221 the department may, but is not required to, provide any overlapping or conflicting locators with notice of the conflicting locations. Locators may seek to resolve conflicts privately or through quiet title action through a court of appropriate jurisdiction. If a locator submits an application for an MLUP or plan of operations on a location that is in conflict with another location, the department will not issue a authorization to explore for, extract, or possess minerals unless the conflicting locators resolve the conflict privately or through a court of appropriate jurisdiction.

(c) A portion of an overlapping location under (b) of this section is void if a state mineral closure is in effect on the date of the location. If a state leasing restriction is in effect on the date of the location, an overlapping location is subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of the location, the state mining claim or prospecting site will not be affected by the subsequent closure or restriction.

(d) If an overlapping locator under (b) of this section records a certificate of location and pays their first annual rental payment in accordance with 11 AAC 86.215, the department will notify the mineral rights owner and each of potentially affected overlapping locator of the conflict.

(e) While claim validity determinations are typically resolved in Alaska Courts of appropriate jurisdiction, the department reserves its authority to adjudicate the validity of a claim, in whole or in part, at any time, in its discretion. (Eff. __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.195 AS 38.05.265
AS 38.05.185 AS 38.05.205 AS 38.05.300

11 AAC 86.220 is repealed and readopted to read:

11 AAC 86.220. Annual labor. (a) Except as provided in 11 AAC 86.115, the first labor year begins on September 1 following the date a location notice is posted under 11 AAC 86.210. Each subsequent annual labor year begins on September 1.

(b) Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. Drilling or excavating, including ore extraction, or geological, geochemical, geophysical, or airborne surveys inside the boundaries of the location, as provided for in AS 38.05.240, may qualify as annual labor. Transportation of workers or equipment within a location or between locations held in common qualifies as annual labor, however, transportation of workers or equipment to or from a location will not qualify as annual labor.

(c) During each labor year in which the performance of annual labor is required, or not later than 90 days after the close of that annual labor year, the owner of each mining claim, leasehold location, or mining lease on state land or some other person having knowledge of the facts, shall properly record an affidavit of annual labor. The affidavit must describe cash payment made instead of performing labor, the monetary value of past excess labor that is applied for the current labor year, the monetary value of past improvements being applied for the current labor year, and the years for which the past excess values were previously reported. The affidavit 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 AS 40.17.030, and must also set out the following essential facts:

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(1) the state assigned file number for the mining claim, leasehold location or lease;

(2) the name and current mailing address of an owner; and

(3) description of labor performed or improvements made during the current mining labor year being recorded for, including the monetary value.

(d) An affidavit required by this section may be made before an 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) A properly recorded affidavit of annual labor that sets out the information and essential facts required in (c) of this section may be amended under AS 38.05.210(c). However, an affidavit that does not set out the essential facts is void under AS 38.05.265 and may not be amended.

(f) A cash payment made instead of performing annual labor must be received by the department as provided in 11 AAC 86.107. Cash payment in-lieu of annual labor submitted to the department by mail must be postmarked not later than August 31. However, a cash payment in-lieu of annual labor submitted to the department by mail postmarked not later than August 31 but received by the department after September 20 of the annual labor year for which it is being submitted is void and of no effect. The payment must be accompanied by a copy of the properly recorded affidavit of annual labor containing the ADL number for the mining claim, leasehold location, or mining lease for which the payment is made. If cash payment in lieu of labor is asserted in a recorded affidavit of annual labor but is not received or postmarked by August 31, the mining claim or leasehold location is abandoned under AS 38.05.265. A locator who makes a

cash payment in lieu of annual labor must also record an affidavit of annual labor under AS 38.05.210 and (c) of this section.

(g) If the monetary value of new labor performed or new improvements made during the mining labor year being reported exceeds that which is required in AS 38.05.210, the excess values may be applied to fulfill the required values for any of the next four consecutive years. To apply the excess values to current or future annual labor requirements, the excess labor performed or excess improvements made, must have been described on a previous properly recorded affidavit of annual labor, subject to the requirements of AS 38.05.210(c).

(h) In this section “properly recorded affidavit of annual labor” means timely recording a notarized affidavit of annual labor in the appropriate recording district in which the mining location is located, including all essential facts under (c) of this section and payment of all applicable recording and indexing fees under 11 AAC 05.010.

(i) A claim, leasehold location, or lease owner who has insufficient carry over labor value to meet the minimum requirements for labor performed, as required in AS 38.05.201(a), or who has insufficient performed labor may combine the carry over labor value, performed labor and cash-in-lieu payment to meet the minimum labor requirements. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am __/__/____, Register __)

Authority: AS 27.05.010 AS 38.05.210 AS 38.05.265
 AS 38.05.020 AS 38.05.242

11 AAC 86.221(c) is amended to read:

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(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 **midnight Alaska Time** [NOON]on the following **August 31** [SEPTEMBER 1]. The first rental year for **an at-risk mining location** [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 **midnight Alaska Time on the following August 31.**[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.]

11 AAC 86.221(e) is amended to read:

(e) If a locator fails to make a timely rental payment, the claim or leasehold location **is** [WILL BE CONSIDERED]abandoned under AS 38.05.265. If a rental payment **for a locator's multiple claims or leasehold locations** is timely submitted to the department, but [THE DIRECTOR DETERMINES THAT]the payment is less than the amount due **for those locator's claims or leasehold locations.** 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-

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day period, the deficient payment will be applied to the full rent due [UNTIL EXHAUSTED
]to the locator's claims and leasehold locations starting with the locator's lowest ADL numbers
first and applied sequentially to each of the locator's successfully higher ADL number until
the locator's deficient payment is exhausted. The locator's claims and leasehold locations
with the remaining ADL numbers for which rent was due and full payment was not received by
the department are abandoned under AS 38.05.265[WILL BE CONSIDERED
ABANDONED WITHOUT FURTHER NOTICE].

(Eff. 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am 1/19/2002,
Register 161; am 8/23/2009, Register 191; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.185 AS 38.05.265
AS 38.05.035 AS 38.05.211

11 AAC 86. is amended by adding a new section to read:

11 AAC 86.224 Penalty and Eligibility to Cure Abandonment. (a) A locator may cure
an abandonment of a mining claim or leasehold location under AS 38.05.265(b) unless, during
the period of abandonment, another person locates a mining claim or leasehold location **that**
meets the requirements in AS 38.05.195 and 11 AAC 86.215 that includes the all or part of the
location abandoned under AS 38.05.265(a).

(b) The penalty payment under AS 38.05.265(b) is equal to the annual rental requirement
under AS 38.05.211 and 11 AAC 86.221 before any credits or reductions provided by the state.

(Eff. __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.265

11 AAC 86.313(e) is amended to read:

(e) 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 midnight Alaska Time on the following August 31.**[AT NOON ON THE FOLLOWING SEPTEMBER 1.]

(Eff. 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am 1/19/2002, Register 161; am 8/23/2009, Register 191; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.185 AS 38.05.211
AS 38.05.035 AS 38.05.205 AS 38.05.265

11 AAC 86.541(c) is amended to read:

(c) [THE FIRST RENTAL YEAR FOR A TIDE OR SUBMERGED LAND MINING LEASE THAT WAS ISSUED ON OR BEFORE AUGUST 31, 1989 BEGAN AT NOON ON SEPTEMBER 1, 1989 AND PAYMENT FOR THAT RENTAL YEAR MUST BE MADE ON OR BEFORE JUNE 29, 1990.]The rental payment for each **tide or submerged land mining lease** [SUBSEQUENT RENTAL YEAR]is due on September 1 and must be paid on or before November 30.

11 AAC 86.541(e) is amended to read:

(e) **Unless a default cure is otherwise provided in a lease contract, if** the lessee fails to make a timely rental payment, **or** [THE LEASE 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 lessee will be granted 30 days after a deficiency notice is delivered under 11 AAC 86.108 to submit the additional rental due. The deficiency notice will specify the ADL number of the lease that will be **terminated** [CONSIDERED ABANDONED]without further notice if full payment is not received within the 30-day period. (Eff. 5/18/90, Register 114; am 4/24/99, Register 150; am 8/23/2009, Register 191; am __/__/____, Register __)

Authority: AS 38.05.020 AS 38.05.185 AS 38.05.250
AS 38.05.035 AS 38.05.211 AS 38.05.265

11 AAC 86 is amended by adding a new section to read:

11 AAC 86.590. Definitions. In 11 AAC 86.100 - 11 AAC 86.590, unless the context requires otherwise or unless otherwise defined in these chapters,

(1) “At-risk mining location” means a mining location on land described in AS 38.05.275(b) that has not been conveyed out of federal ownership.

(2) “State-selected Lands” has the meaning defined in AS 38.05.275(b).

(3) “Overlapping location” means a subsequent location that either partially or totally overlaps an existing mining location. (Eff. __/__/____, Register __)

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Authority: AS 38.05.020 AS 38.05.185

Editor's Note: Other definitions applicable to 11 AAC 86.100 - 11 AAC 86.590 appear in 11 AAC 88.185.