

FAQS for Alternative 3B

INTRODUCTION

Due to issues facing the cabin and homesite program resulting from the Department of Revenue (DOR) 2009 property assessments, the Director of the Department of Natural Resources & Conservation (DNRC) recommended to the State Land Board that they direct the DNRC to prepare a draft set of rules to implement Alternative 3B (described below). Alternative 3B was one of 5 alternatives presented to the Land Board on October 19, 2009, to address the cabin and homesite issues. The Land Board has directed the DNRC to prepare a set of draft rules for the December Land Board meeting to implement Alternative 3B.

As a result of the Land Board's direction, the DNRC has received a number of questions from cabin and homesite lessees about their options. Many of the questions also indicate confusion about the terminology used by the cabin and homesite program.

This document was prepared to provide everyone with standard terminology and to answer the most frequently asked questions, so that lessees can make informed decisions.

TERMINOLOGY

Abandonment is to give up ownership of the lessee-owned improvements. This can occur either under cancellation or reconveyance. A form will be provided by DNRC to the lessee for this action.

Adjusted 2009 Appraised Value is the 2003 DOR appraised value for a state parcel increased annually by 6.53% (REI for the period of 1983 – 2003) to 2009.

Administrative Rules (ARM) are the rules that implement State statutes. Development of Administrative Rules is governed by State statutes.

Annual lease rental period is March 1 to the last day of February annually.

Assignment is the transfer of the current lease agreement to another person to continue with the lease terms and conditions.

Base Rent is the Adjusted 2009 Appraised Value x 5% (Lease Rate under Alternative 3B).

Cancellation is an involuntary ending of a lease before the end of its stated term. Cancellation is a DNRC action taken to end a lease due to lessee deficiency or breach of contract.

Consumer Price Index (CPI) is a measure of the change of the price of a basket of consumer goods over time. The CPI is the Western Urban Index and is publicly available and provided by the U.S. Bureau of Labor Statistics (<http://www.bls.gov/>). The CPI used to establish the LFI will be the average of the 12 month period prior to October 1 of each year.

Department of Natural Resources and Conservation (DNRC) is the State agency responsible for the management of State Trust lands.

Department of Revenue (DOR) is the State agency responsible for the appraisal of real property for taxation purposes and for the appraisal of State Trust lands for residential leasing purposes.

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Former Lessee is the most recent lessee to hold an assigned, re-conveyed, or cancelled lease agreement.

Land Use License (LUL) is a permit issued by the DNRC for a limited use and time period.

Lease Fee Index (LFI) is the index that is applied annually to the previous year's lease fee under Alternative 3B. The LFI is the average of the CPI and the REI.

Lease Rate is the rate that is applied to the Adjusted 2009 Appraised Value to establish the base rent.

Lessee is a person or entity that has entered into a lease contract with the DNRC for the leasing of State Trust lands.

New Lessee is a lessee that has recently obtained a lease under an assignment or competitive bidding process.

Real Estate Index (REI) is the average annual change in total value of state cabin site parcels over the previous 25 year period or closest 25 year period of the DOR reappraisal values.

Reconveyance conveys the state leased property back to the state. If there are lessee owned improvements the lessee must notify the state that they either want to remove their improvements or be compensated for those improvements by a new lessee. A form from DNRC will be provided to the lessee for this action.

Security Interest is a notice to the DNRC that a third party has an interest in the improvements placed on the State lease. This notice is an unexecuted assignment form signed by the Security Interest holder and the lessee, and held by the Security Interest holder, with a copy on file with the DNRC. The Security Interest holder may ask the DNRC to execute the assignment form if the Lessee is in breach of their lease, their improvements agreement or both.

Semi-annual lease rental period is March 1 to August 31 or September 1 to the last day of February.

Termination is the ending of a lease for any reason: expiration, cancellation, reconveyance, etc.

Trust Lands are lands that were granted to the state at statehood for the support of schools and other beneficiaries.

WHAT IS ALTERNATIVE 3B?

Based on the comments received during the scoping period, DNRC developed Alternative 3B to capture issues raised in the comments, blend the alternatives and attempt to capture the increase and decrease in the market on an annual basis to more accurately reflect potential vacancies and current market conditions. This new alternative reflects components of Alternatives 1 through 4.

Base Rent Determination:

The 2003 appraised value will be increased by 6.53% for 6 years to establish the Adjusted 2009 Appraised Value. The Adjusted 2009 Appraised Value will be compared to the actual 2009 reappraisal value. The lower of these two values will be used as the Base Rent. The actual or Adjusted appraised value will be $\times 5\% = \text{Base Rent}$

Annual Adjustments:

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Methodology for Calculation and Implementation of Alternative 3(b) Cabin Site Rents

The Alternative 3b rents will be implemented over the next 4 years:

Group	A, B	C	D	E
Year	2010	2011	2012	2013

•Review year is based on year lease started:

- A: 2008, 2003, 1998, 1993, 1988 etc.
- B: 2009, 2004, 1999, 1994, 1989 etc.
- C: 2005, 2000, 1995, 1990, 1985 etc.
- D: 2006, 2001, 1996, 1991, 1986 etc.
- E: 2007, 2002, 1997, 1992, 1987 etc

Calculating the 2009 Adjusted Value: Example

2003 DoR value	\$100,000
2004 ~ 6.53% increase	\$106,530
2005 ~ 6.53% increase	\$113,486
2006 ~ 6.53% increase	\$120,897
2007 ~ 6.53% increase	\$128,792
2008 ~ 6.53% increase	\$137,202
2009 ~ 6.53% increase	\$146,161

the 2009 Adjusted Value = \$146,161

Base Rent = 5% of 2009 Adjusted Value, or \$7,308.05
 ~if the 2009 Dept. of Revenue value is lower than the "Adjusted Value," the DoR value will be used to calculate the base rent.

Calculating the rent amounts: maximum growth

	2010	2011	2012	2013
A,B	\$7,308.05	\$7,783.07	\$8,288.97	\$8,827.76
C	contract	\$7,783.07	\$8,288.97	\$8,827.76
D	contract	contract	\$8,288.97	\$8,827.76
E	contract	contract	contract	\$8,827.76

Example rent calculation: 2011 rent = 2010 rent * (1 + LFI)
 This table uses 0.065 for the LFI, which is the maximum cap on the LFI according to current descriptions of alternative 3b.

Calculating the rent amounts: minimum growth

	2010	2011	2012	2013
A,B	\$7,308.05	\$7,545.56	\$7,790.79	\$8,043.99
C	contract	\$7,545.56	\$7,790.79	\$8,043.99
D	contract	contract	\$7,790.79	\$8,043.99
E	contract	contract	contract	\$8,043.99

Example rent calculation: 2011 rent = 2010 rent * (1 + LFI)
 This table uses 0.0325 for the LFI, which is the minimum floor on the LFI according to current descriptions of alternative 3b.

~until the review year in which the 3b rents are effective for the C-E groups, they will finish paying the annual rent amounts as laid out in their lease contracts. Some of these lessees are continuing to phase in to 5% of their 2003 Appraised Value; others are already at that level and will pay that amount annually until their review year.

~We will continue to keep track of minimum and competitive bid rents: lessees will continue to pay that amount annually until the year in which the calculated 3b rent surpasses the amount they are paying.

The Base Rent will be increased by the LFI on an annual basis starting in 2010.

Lease Fee Index (LFI):

The LFI, is recalculated annually and would be limited to a range of 3.25% to 6.5% (3.25% represents the average change in the CPI from 1983 to 2008; 6.5% represents the average annual appreciation of real estate from 1983 to 2003). Once the Base Rent is established, the lease fee would be adjusted annually by the LFI.

The 2 rent tables illustrate the potential range within which actual rents might fall for a cabin site with a 2003 parcel value of \$100,000, depending on the LFI. Assuming the annual change in CPI used in calculating 2011 rent is 2%. The average of CPI of 2%, and REI of 8.75%, would result in an LFI of 5.37%. The 2011 rent would then be $\$7,308.05 \times 1.0537 = \underline{\$7,700.49}$.

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FREQUENTLY ASKED QUESTIONS (FAQS)

About Alternative 3B:

Q1: *My actual 2009 DOR value is lower than the 2009 projected value, how will the DNRC value my lease lot?*

The DNRC will use the lower of the 2009 projected value or the actual 2009 DOR value.

Q2: *Do I have to pay my lease fee consistent with Alternative 3B?*

You may continue with the terms and conditions of your lease contract and not sign a 2010 Alternative 3B Supplemental Lease Agreement. The lease fee under the current lease agreement will require the lessee to pay 5% of the most recent DOR appraisal. The DNRC does not have the authority to phase in lease fees.

Q3: *Does DNRC operate under the existing ARM until 3B rules take effect?*

Yes.

Q4: *Do I have the option of not signing the 2010 Alternative 3B Supplemental Lease Agreement and paying 5% of the 2009 DOR value and continue to receive new lease fees according to my existing lease agreement?*

Yes, the lease fee under the current lease agreement will require the lessee to pay 5% of the most recent DOR appraisal. The DNRC does not have the authority to phase in future lease fees as was done in 2003.

Q5: *When does Alternative 3B take effect?*

All leases will be fully phased in as described in their lease agreement and 2008 supplemental lease agreement. Once the rules have been completed for Alternative 3B, a new 2010 Alternative 3B Supplemental Lease Agreement will be offered to the lessees. The new 2010 Alternative 3B Supplemental Lease Agreement will become effective upon signature and will allow the DNRC to implement the 3B lease process for lessees. If the 2010 Alternative 3B Supplemental Lease Agreement is not signed, the lease will remain in effect and at the time of renewal or review (whichever is first) the annual lease fee will be assessed at 5% of the most current DOR appraised value (2009). The DNRC does not have the authority to phase in future lease fees as was done in 2003.

Q6: *If someone has not already signed the 2008 Supplemental Lease Agreement, can they do so now and have it impact the lease similarly?*

No, it will not be necessary. The lessee will only have the option of continuing with their current lease agreement or signing the 2010 Alternative 3B Supplemental Lease Agreement.

About Lease Improvements:

Q7: *Is an LUL required by the lessee to allow a realtor to list and sell and show the property?*

No, we have determined that this will not be necessary.

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Q8: *Will the former lessee be responsible for listing the improvements for sale and paying the realtor fee in that 2-year period?*

Yes, if the former lessee wants to have real estate agents market their improvements. When the lease is offered for competitive bid, DNRC may post standard marketing information about the improvements on their web site. Standard forms will be provided to the lessee by DNRC to fill out for posting the information.

Q9: *What is the process to list and sell my improvements?*

Current Lessees may list their improvements for sale at any time. The lessee would make application at the local DNRC field office for assignment prior to sale.

Former Lessees:

1. Must vacate and not occupy the improvements.
2. Must inform the DNRC that they want to be compensated for their improvements by a new lessee. The DNRC does not compensate a former lessee for their improvements.
3. May market the improvements.
4. May maintain the improvements.
5. Must be current on all property taxes to be compensated for the improvements.
6. Are eligible to hold interest in improvements on Trust Lands for up to two years. After that time, the improvements must be removed or the improvements become property of the state.
7. The value of the improvements will be indicated by the DNRC when the lease is offered for competitive bidding.
8. The value of the improvements will be either the valuation determined by the DOR or an appraisal contracted by the DNRC and paid for by the former lessee.
9. The successful bidder will either pay the former lessee the advertised value or a value that is less than the advertised value as negotiated between the improvements seller and buyer.
10. If a former lessee's lot has not been leased by DNRC within the 2-year period, the former lessee will be informed that they have the right to remove the improvements within a 60-day period. If the former lessee chooses not to obtain an LUL and not remove the improvements, the improvements will become the property of the State.

Q10: *Will the proposed rules change how improvements will be sold?*

The intent is that the rules will be drafted to extend the time period the former lessee may be compensated for their improvement by a new lessee from 2 years to 3 years.

Q11: *If I want to remove my improvements, what is the process?*

Current Lessees would submit an improvements request form with the local DNRC office for the removal of the improvements.

Former Lessees can apply for a LUL for a 60-day period to remove the improvements. The LUL fee will be 1/6 of the previous annual lease fee.

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Q12: *What about removing improvements after the lease is over and the 2-year period has ended?*

Former Lessees can apply for an LUL for a 60-day period to remove the improvements. The LUL fee will be 1/6 of the previous annual lease fee.

Q13: *What happens to my lease if my improvements have been foreclosed on by my lender or if I take out bankruptcy?*

Upon proof that a person/entity/lender has acquired the improvements through foreclosure, the DNRC will assign the lease to that person or entity, who is then subject to all of the conditions, obligations, and liabilities and entitled to all the rights and privileges provided for in the lease. To authorize assignment of a lease, a decree of foreclosure must specifically refer to the lease or the leased premises.

Q14: *When does the clock start ticking for the 2 years to sell my improvements?*

From the effective date of any of the forms the lessee signs associated with either cancellation or reconveyance. If a lease is canceled and there is no signed form, letters from the DNRC will indicate the dates.

Q15: *How are improvements going to be sold?*

Current Lessees can list their improvements for sale at any time. The sale of the improvements is typically contingent on the assignment of the lease. The ownership of the improvements and the lessee must be the same entity. Therefore, the sale of the improvement occurs and the assignment of the lease is then filed with the DNRC for approval.

Former Lessees:

1. The value of the improvements will be either the valuation determined by the DOR or an appraisal contracted by the DNRC and paid for by the former lessee.
2. The value of the improvements may be indicated by the DNRC when the lease is offered for competitive bidding.
3. The successful bidder will either pay the former lessee the advertised value or negotiate with the former lessee to pay a lower value that is less than the advertised value.
4. If a former lessee's lot has not been leased by DNRC within the 2-year period, the former lessee will be informed that they may request an LUL that would grant the right to remove the improvements within a 60-day period. If the former lessee chooses not to obtain an LUL and not to remove the improvements, the improvements will become the property of the State.

Q16: *When does the 60-day period to remove improvements begin after reconveyance, termination or cancellation?*

From the effective date of cancellation, termination or reconveyance. If a lease is cancelled and there is no signed form, letters from the DNRC will indicate the dates.

Q17: *When does the 60-day period to remove the improvements begin before the improvements become property of the state?*

If the former lessee chooses to remove their improvement, the former lessee would request an LUL for sixty (60) days to remove their improvements. There are two potential 60-day periods for

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removal, either at termination, cancellation or reconveyance or at the end of the 2-year compensation period.

Q18: *If a lessee is purchasing an LUL for the removal of their improvements, what is the cost and duration?*

The removal LUL is 1/6th of the lease fee and good for 60 days as stated in the lease agreement.

About Reconveyance/Abandonment:

Q19: *How do I re-convey my lease?*

On a form provided by the DNRC, a lessee may request to re-convey their State lease back to the State. This action should occur at least 30 days before the annual or semi-annual lease fee is due. The reconveyance of the lease will be from the date specified on the form as either the date the annual or semi-annual lease fee is due next or a date prior to that per the lessee's request unless the date exceeded the date when payment was expired.

Q20: *I want to abandon or re-convey my lease now and get a refund, how do I do it?*

No refunds will be issued for the abandonment of the improvements and reconveyance of the lease agreement.

Q21. *If I re-convey my lease, what happens to my improvements?*

On a DNRC-approved reconveyance, the former lessee will have the ability to either remove their improvements subject to an LUL or request to be compensated for their improvements by a new lessee. The process is the same for a lease that has been **re-conveyed** back to the DNRC, or **cancelled**. (see Q9 sub 1-10)

About Security Interests:

Q22: *How is a Security Interest handled under a cancellation, reconveyance or abandonment?*

Reconveyance:

The Security Interest holder will be informed by certified mail of the lessee's request to reconvey. If the Security Interest holder objects to the reconveyance, the DNRC will deny the reconveyance request. The lessee will have the choice of: continuing the lease; assigning the lease to another party; or proceeding to cancellation of the lease for non-payment (April 1 for annual payments and October 1 for semi-annual payments). The State will not approve the assignment of any lease or license that is subject to a pledge or mortgage without first notifying the pledgee or mortgagee in writing.

Cancellation:

The Security Interest holder will be informed of non-payment 15 days prior to due date. If the Security Interest holder files the assignment held in escrow, the assignment will be approved. If the Security Interest holder pays the lease fee, the lease will remain in good standing. If the lease is cancelled, the Security Interest will be cancelled.

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Abandonment:

The Security Interest holder will be informed by certified mail of the lessee's request to abandon the improvements. If the Security Interest holder objects to the abandonment, the DNRC will deny the request to abandon. The lessee will have the choice of: continuing the lease; assigning the lease to another party; or proceeding to cancellation of the lease for non-payment, April 1 for annual payments and October 1 for semi-annual payments. The state will not approve the assignment of any lease or license that is subject to a pledge or mortgage without first notifying the pledgee or mortgagee in writing.

General Questions:

Q23: How many leases can one person hold?

Any person 18 years or older may lease state land. Any eligible person, association, company, or corporation authorized to hold lands under lease may lease state lands and may hold more than one lease to state lands.

Q24: What if a lessee can't pay for a lease beginning March 1, how do the hardship folks proceed?

The lessee may pay the lease fee semi annually. If payment is not received the lease is subject to cancellation for non-payment. Alternative 3B will have provisions for hardship as outlined at the Land Board. A list of State and local assistance programs are available at your local DNRC office.

Q25: Do new rules supersede the existing ARM, and if so, when?

Yes. However, most of the existing rules will remain unchanged and new rules will be written only to reflect the elements of Alternative 3B. Implementation of Alternative 3B will occur after the rules are adopted by amending leases with the 2010 Alternative 3B Supplemental Lease Agreement. Unless leases are amended with the 2010 Alternative 3B Supplemental Lease Agreement, those leases will be charged at 5% of the 2009 DOR value without a phase-in.

Q26: If my lease has been canceled, as a former lessee can I bid on the lease or another lease?

Canceled for non-payment:

You may bid on the lease or another lease if you have been canceled for non-payment.

Canceled for breach of contract other than non-payment:

You may bid on the lease and or another lease. Issuance of that lease will be at the discretion of the Land Board.

Termination:

You may bid on the lease or another lease.

Preference Right:

You do not have a preference right when you bid on the lease during the 2-year time period that you may be compensated by a new lessee. You do not have a preference right when you bid on another lease.

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Q27: *How long can I stay on the property if I cannot pay my lease fee?*

1. Rent payments must be postmarked by 3/1.
2. We wait approximately 1 week beyond 3/1 to send out late notices with \$25 late fee. Copy of letter sent to security interest holders.
3. Rent and late fee must be postmarked by 4/1.
4. We wait approximately 1 week beyond 4/1 to prepare the cancellation letters with \$500 reinstatement.
5. Certified cancellation letters are sent by 4/15 with a deadline date of 30 days after receipt of the letter to re-instate their lease with a \$500 re-instatement fee.
6. Reinstatement deadline is approximately 5/15 – 5/30 depending on when the certified letter has been accepted by the lessee.
7. The process is the same for semi-annual lease payments, with the re-instatement or cancellation deadline being 11/15 – 11/30.

Q28: *Will the subleasing policy change with the development of the new rules?*

The subleasing policy will not be part of the development of the new rules. The current policy allows for subleasing of the state lease and limits the ability to obtain compensation for the sublease that exceeds the annual lease fee either with or without lessee-owned improvements. The policy may be modified at the discretion of the DNRC to allow subleasing to occur where the compensation to the lessee could exceed the annual lease fee, providing additional compensation was received by the state.

Q29: *Will there be a lease calculator on the website so I can determine my lease fee under Alternative 3B?*

The DNRC web site will have a lease fee calculator for Alternative 3B in the near future. Please continue to check the web site for periodic updates.
www.dnrc.mt.gov/cabinsite/LeaseFeeFAQ.asp

THESE FAQS WILL BE POSTED ON THE WEB SITE AND AVAILABLE AT YOUR LOCAL DNRC OFFICE. THE QUESTIONS MAY BE UPDATED AS NEEDED.

www.dnrc.mt.gov/cabinsite/LeaseFeeFAQ.asp