



June 2022 Chair Report

Leasing Authorities of the Department



A Presentation to the Board of Natural Resources

June 7, 2022

Duane Emmons



Agenda



- Overview of Leasing RCWs

- Chapter 43.30 RCW - DEPARTMENT OF NATURAL RESOURCES



- Chapter 79.13 RCW - LAND LEASES

- Chapter 79.22 RCW

ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FORESTLANDS

- Review of Washington Administrative Code



- Chapter 332-22 WAC STATE LAND LEASING PROGRAM RULES



RCWs





Revised Code of Washington (RCW)

RCW [43.30.030](#)

Department created.

The department of natural resources is hereby created, to consist of a board of natural resources, an administrator and a supervisor.

RCW [43.30.105](#)

Administrator of department.

The commissioner of public lands shall be the administrator of the department.

RCW [43.30.155](#)

Supervisor of natural resources—Appointment.

The supervisor shall be appointed by the administrator with the advice and consent of the board. The supervisor shall serve at the pleasure of the administrator.





RCW [43.30.215](#)

Powers and duties of board.

The board shall:

- (1) Perform duties relating to appraisal, appeal, approval, and hearing functions as provided by law;
- (2) **Establish policies** to ensure that the **acquisition, management, and disposition** of all lands and resources within the department's jurisdiction are based on sound principles designed to achieve the **maximum effective development and use of such lands** and resources consistent with laws applicable thereto;
- (3) Constitute the board of appraisers provided for in Article 16, section 2 of the state Constitution;
- (4) Constitute the commission on harbor lines provided for in Article 15, section 1 of the state Constitution as amended;
- (5) Constitute the board on geographic names as provided for in RCW [43.30.291](#) through [43.30.295](#); and
- (6) **Adopt and enforce rules** as may be deemed necessary and proper for carrying out the powers, duties, and functions imposed upon it by this chapter.





Revised Code of Washington (RCW)



Title 79 RCW

PUBLIC LANDS

Chapters

- 79.02 Public lands management—General.
- 79.10 Land management authorities and policies.
- 79.11 State land sales.
- 79.13 Land leases.
- 79.14 Mineral, coal, oil, and gas leases.
- 79.15 Sale of valuable materials.
- 79.17 Land transfers.
- 79.19 Land bank.
- 79.22 Acquisition, management, and disposition of state forestlands.
- 79.24 Capitol building lands.
- 79.36 Easements over public lands.
- 79.38 Access roads.
- 79.44 Assessments and charges against lands of the state.
- 79.64 Funds for managing and administering lands.
- 79.70 Natural area preserves.
- 79.71 Washington natural resources conservation areas.
- 79.73 Milwaukee road corridor.
- 79.100 Derelict vessels.
- 79.105 Aquatic lands—General.
- 79.110 Aquatic lands—Easements and rights-of-way.
- 79.115 Aquatic lands—Harbor areas.
- 79.120 Aquatic lands—Waterways and streets.
- 79.125 Aquatic lands—Tidelands and shorelands.
- 79.130 Aquatic lands—Beds of navigable waters.
- 79.135 Aquatic lands—Oysters, geoducks, shellfish, other aquacultural uses, and marine aquatic plants.
- 79.140 Aquatic lands—Valuable materials.
- 79.145 Marine plastic debris.
- 79.150 Forest biomass materials located on state lands.
- 79.155 Community forest trusts.





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- 79.13.020 Who may lease.
- 79.13.030 Lease contents.
- 79.13.040 Inspections—Surveys.
- 79.13.050 Improvements.
- 79.13.060 Lease terms.
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Revised Code of Washington (RCW)

RCW [79.13.010](#)

Lease of state lands—General.

- (1) Subject to other provisions of this chapter and ***subject to rules adopted by the board***, the department may lease ***state lands*** for ***purposes it deems advisable***, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain ***a fair market rental return*** to the state or the appropriate constitutional or statutory trust, and if the ***lease is in the best interest*** of the state or affected trust.





Revised Code of Washington (RCW)

RCW [79.22.050](#)

Sales and leases of timber, timberland, or products thereon.

Except as provided in RCW [79.22.060](#), all land, acquired or designated by the department as state forestland, shall be forever reserved from sale, but the valuable materials thereon may be sold ***or the land may be leased in the same manner and for the same purposes as is authorized for state lands*** if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.....





Revised Code of Washington (RCW)

RCW [79.13.030](#)

Lease contents.

Every lease issued by the department must contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required, if any;
- (3) Provisions providing that the rent is payable in advance in quarterly, semiannual, or annual payments as determined by the department, or as agreed upon by the lessee and the department;
- (4) Other terms and conditions as the department deems advisable, **subject to review by the board**, to achieve the purposes of the state Constitution and this chapter.



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

WIND POWER DEVELOPMENT

LEASE NO. 60-098901

Lessee's Reference: Rattlesnake Flat

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to Rattlesnake Flat, LLC, a Delaware limited liability company (hereinafter "Lessee") that area of land in Adams County, Washington, legally described in Exhibit A, hereinafter "Premises", upon the terms and conditions set forth and for the consideration enumerated herein.

SECTION 1-DEFINITIONS

1.01 Cessation. Cessation shall have occurred when delivery of commercial electricity or other electric or non-electric products from the Project Improvements have ceased for a period of greater than four (4) consecutive months, other than as a result of force majeure or the Repowering of the Wind Project or other repair or improvement work being diligently pursued by Lessee.

1.02 Commercial Operations. The delivery of electricity or other electric or non-electric products produced by the Project Improvements to Purchasers or third parties for which consideration is due and payable to Lessee. The first day of Commercial Operations starts upon the initial delivery of commercial electricity or other electric or non-electric products from the Project Improvements and ends upon Cessation of such deliveries for consideration due and payable to Lessee. Deliveries of electricity or other electric or non-electric products for charitable donation or barter constitute Commercial Operations.

Wind Power Development Lease

1 of 56

Lease No. 60-098901





RCW [79.13.110](#)

Types of lease authorization.

- (1) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases.
- (2) Leases that authorize commercial, industrial, or residential uses may be entered into ***by public auction or negotiations*** at the option of the department. Negotiations are **subject to rules approved by the board.**
- (3) Leases to public agencies, as defined in RCW [79.17.200](#), may be entered into by negotiations. Property subject to lease agreements under this section must be appraised at fair market value. The leases may allow for a lump sum payment for the entire term of the lease at the beginning of the lease. The department shall calculate lump sum payments using professional appraisal standards. Renewal terms for the leases must include provisions for calculating appropriate payments upon renewal.



WACs





Washington Administrative Code (WAC)

WAC 332-22-010

Promulgation.

This chapter is promulgated by the board of natural resources pursuant to the authority granted by RCW [79.01.242](#) (now RCW [79.13.010](#)) to establish procedures for the department's state land leasing program. The board of natural resources recognizes that in order ***to obtain a fair market return*** to the trust, certain of its lands should be retained and managed through leasing. These rules are designed to ***establish practical leasing procedures*** and achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed by law on such lands.






Washington Administrative Code (WAC)

Title 332 WAC | [Show Dispositions](#)

NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters

- 332-08** Practice and procedure.
- 332-10** Public records—Department of natural resources and board of natural resources.
- 332-12** Oil and gas leases.
- 332-14** Coal leasing rules and regulations.
- 332-16** Mineral prospecting leases and mining contracts.
- 332-17** Geothermal drilling rules and regulations.
- 332-18** Surface mine reclamation.
- 332-20** Grazing lands.
- 332-21** State urban lands.
- 332-22** State land leasing program rules. 
- 332-24** Forest protection.
- 332-26** Emergency and short term rules.
- 332-28** Harbor line commission.
- 332-30** Aquatic land management.
- 332-32** Insect and worm control.
- 332-36** Road rules on state-owned lands.
- 332-41** SEPA policies and procedures.
- 332-52** Public access and recreation.
- 332-60** Natural areas—Natural area preserves.
- 332-100** Leases, sales, rights of way, etc.
- 332-110** Leases of state-owned land.
- 332-120** Survey monuments—Removal or destruction.
- 332-130** Minimum standards for land boundary surveys and geodetic control surveys and guidelines for the preparation of land descriptions.
- 332-140** Forest Products Industry Recovery Act of 1982.
- 332-150** Survey, plat and map filing and recording fees.
- 332-160** Committee on geographic names and geographic names policies and procedures.

Chapter 332-22 WAC

STATE LAND LEASING PROGRAM RULES

WAC Sections

- [HTML](#) [PDF](#) **332-22-010** Promulgation.
- [HTML](#) [PDF](#) **332-22-020** Definitions.
- [HTML](#) [PDF](#) **332-22-025** Bonus bid.
- [HTML](#) [PDF](#) **332-22-030** Applications to lease.
- [HTML](#) [PDF](#) **332-22-040** Lease auction procedure.
- [HTML](#) [PDF](#) **332-22-050** Lease procedure—Amendment.
- [HTML](#) [PDF](#) **332-22-060** Lease procedure—Rental adjustments.
- [HTML](#) [PDF](#) **332-22-070** Lease procedure—Notice.
- [HTML](#) [PDF](#) **332-22-080** Rights to re-lease denied.
- [HTML](#) [PDF](#) **332-22-090** Notice to lessee of public auction.
- [HTML](#) [PDF](#) **332-22-100** Existing lease negotiation.
- [HTML](#) [PDF](#) **332-22-105** Initial lease for commercial, industrial, or residential uses by negotiation.
- [HTML](#) [PDF](#) **332-22-110** Mandatory lease terms.
- [HTML](#) [PDF](#) **332-22-120** Assignment.
- [HTML](#) [PDF](#) **332-22-130** Residential leases.
- [HTML](#) [PDF](#) **332-22-140** Expired leases—Occupancy.
- [HTML](#) [PDF](#) **332-22-150** Temporary use permits.
- [HTML](#) [PDF](#) **332-22-160** Performance security.
- [HTML](#) [PDF](#) **332-22-170** Geothermal resources lease—Area.
- [HTML](#) [PDF](#) **332-22-180** Geothermal resources lease—Plan of development.





Washington Administrative Code (WAC)

WAC 332-22-060

Lease procedure—Rental adjustments.

All leases shall provide for periodic rental reevaluation and adjustment, except leases with rentals based upon a percentage of crop or income. The lessee may request rental adjustments as provided in RCW [79.01.096](#).





Washington Administrative Code (WAC)

WAC 332-22-105

Initial lease for commercial, industrial, or residential uses by negotiation.

(1) The department may negotiate initial leases to authorize commercial, industrial, or residential uses on specific parcels of land zoned for such uses provided:

(a) Not more than one application is received by the department to lease the property.

(b) The department determines that a rent of at least fair market rental can be obtained through negotiation.

(c) The department publishes a notice of intent to lease which contains the legal description and zoning of the property, the office to which application to lease can be made, and the final date to submit a written request to lease. The notice shall be published not more than thirty days nor less than twenty days immediately preceding commencement of negotiation in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

(d) The department shall report to the board of natural resources on each initial lease entered into by negotiation. The report shall include the fair market value of the property, rental and lease terms.

(2) The department may negotiate initial leases at fair market rental to authorize placement and maintenance of communication equipment in or on electronic site buildings and on electronic site towers.





Washington Administrative Code (WAC)

WAC 332-22-110

Mandatory lease terms.

Each lease negotiated or placed at public auction shall contain the following terms:

(1) The use or uses to which the land is to be employed. Provision must be made by insurance or otherwise, to protect the department against third-party claims arising from the uses made of the property by the lessee.

(2) Improvements which exist on the land at the time lease negotiation is completed or public auction is held shall be specifically described and, unless otherwise designated shall be considered as a part of the value of the land. Improvements may be required to be constructed as a condition of a lease. All existing improvements or those authorized or required under the conditions of the lease must be maintained at the sole cost of the lessee unless otherwise provided. All improvements must be protected against casualty loss in a manner satisfactory to the department unless otherwise provided. Improvements placed upon the land by the lessee shall become the property of the state at the end of lease term unless otherwise provided.

(3) Any lease with a term of more than ten years shall require a plan of development which includes scheduled completion dates for all required activities, improvements, or other actions.



Questions?



