

Keweenaw Land Association Direct Lease Application - Question Summary

Applicant

- Q. Shouldn't a corporation's financial status, such as profitability or tax-paying status, be considered when leasing materials of "critical and strategic" importance?
- A. *Lessees are required to be registered and in good standing with the Department of Licensing and Regulatory Affairs (LARA) and must have a sufficient bond and insurance policy before a lease is issued. Standard language is included in the lease that allows the Department of Natural Resources (DNR) the discretion to terminate a lease in the event payments are not made by the due date.*
- Q. Is Keweenaw Land Association (KLA) a qualified party to lease the state-owned minerals?
- A. *Based on the current policies and procedures, KLA meets the criteria necessary to lease state-owned mineral rights.*

Surface Owners

- Q. We discussed various protective measures sought by the landowner that could limit a mineral lease, including but not limited to seasonal and access area constraints, among others. How would such constraints sought by a private landowner be incorporated into a state mineral lease? And would the private landowner be able to enforce them? If so, how?
- A. *The DNR mails surface owner's letters informing them of a pending application and accepts comments and concerns to be considered in the parcel classification process. While the surface owner needs to allow reasonable access to underlying minerals, the surface owner can negotiate an agreement with the exploration company designating reasonable conditions for use of the surface.*
- Q. Will the DNR include restrictions in the lease based on the surface owners' reasonable requests to protect surface resources?
- A. *While the surface owner needs to allow reasonable access to underlying minerals, the surface owner can negotiate an agreement with the exploration company designating reasonable conditions for use of the surface.*
- Q. Why do subsurface landowners have preference over surface landowners, the public, and the use of these lands?
- A. *Once mineral rights are severed from the surface estate in Michigan, the mineral estate becomes the "dominant estate" and the surface estate becomes the "servient estate." This legal principle recognizes that some degree of surface access is necessary to develop the mineral estate. Because of its dominance, the mineral estate holds an implied easement to use as much of the surface as is reasonably necessary for the development of the mineral estate.*

Keweenaw Land Association Direct Lease Application - Question Summary

- Q. Will the DNR inform the surface owner when an exploration plan is submitted, if one is submitted?
- A. *Before mining operations may be commenced on the on the surface of the land in which the state of Michigan owns mineral rights only, proof shall be submitted to the Lessor, in writing, that either voluntary agreement or stipulated settlement relative to surface use and damages has been reached between the Lessee or Lessee's authorized agent and the surface owner.*

Direct Lease vs. Auction

- Q. Why are the companies self-nominating themselves to get critical and strategic minerals in the state of Michigan?
- A. *Per Michigan Administrative Code R 299.4002, any party interested in leasing state-owned metallic mineral rights can nominate state-owned mineral rights for lease. Due to the nature of identifying and processing metallic minerals, this is a process where interested parties can apply for parcels with the intent of pursuing mineral exploration with the opportunity to develop a viable project. A nomination is not a guarantee that a lease will be offered.*
- Q. What would happen if the DNR Forestry Division allowed loggers and paper companies to self-nominate state forest lands for cutting?
- A. *There is an opportunity for logging companies to provide input regarding state forest harvest plans. State forests are managed in a way that promotes future growth, land use, and habitat. Foresters and other DNR professionals have the ability to visually inspect a particular forest and determine the best approach to accomplish these goals. This isn't comparable to developing subsurface minerals that require a significant amount of time and resources to locate.*

Rental Fees

- Q. The DNR is charging \$3 per acre in lease fees. This fails to consider the relative scarcity and ever-increasing value of the minerals, and to ensure that they are managing nonrenewable metallic mineral resources for the future. The leasing should be increased in terms of the annual fee.
- A. *The fee structure includes an escalating annual rental rate, which encourages lessees to get to the production stage, and allows for the right to explore or develop a parcel during the initial term of the lease. If a lessee begins to produce, the rental rates revert to royalty rates based on a Royalty Rate Schedule. The significant share of revenue from metallic minerals leases comes from production royalties.*

In-Person vs. Virtual Meetings

- Q. An in-person meeting would help solve all these issues with some extra time spent for people to speak, to show the public that the DNR is actually here for the people. Why are these meetings held virtually?

Keweenaw Land Association Direct Lease Application - Question Summary

- A. *The logistics to facilitate in person meetings are not always feasible. To accommodate as many interested parties as possible, virtual meetings with log-in and call-in options have been determined to be the best option.*

Environment

- Q. The Michigan Department of Environment, Great Lakes and Energy (EGLE) is responsible for all exploration and mineral extraction permits, and those permits are issued almost automatically. Is this true?
- A. *There are processes and requirements in place for various permitting programs overseen by EGLE and an applicant must meet those requirements before a permit is issued. Exploration and mining activities may require more than one permit from EGLE to begin construction and/or operations, depending on the type, extent, location, and impacts of the activities proposed. More information regarding EGLE permitting programs can be found here: EGLE Permits (michigan.gov) and information regarding programs specific to mining can be found here: [Mining in Michigan](#).*
- Q. The landowner is particularly concerned about hydrologic impacts; these impacts could result even from directional drilling not utilizing the surface of this parcel. How have potential hydrologic impacts from exploration been assessed to date? Are additional impact assessments required prior to a lease being issued? If so, what types of assessments, who will perform it/them, and how can the landowner or a hydrologist hired by the landowner be involved in that process?
- A. *There are specific requirements for the various permitting programs at EGLE. One example is that nonferrous metallic mining permit applications are required to include an Environmental Impact Assessment (EIA) identifying potential impacts to conditions or features including, but not limited to, groundwater, surface water, threatened and endangered species, and cultural resources. A description of methodologies and information that demonstrates that the methodologies are appropriate and effective, or are widely used and generally accepted, is required in an EIA. Additional information for EGLE permitting programs can be found here: [EGLE Permits \(michigan.gov\)](#).*
- Q. The landowner is concerned about potential exploration's impact to threatened and endangered species. You stated that a field survey has not been performed at this parcel. Will a field survey be performed prior to the granting of a lease? If the surface owner wishes to procure a field survey prior to a lease being granted, will the state honor his request to do so even if it delays the lease process due to the seasonal nature of complete surveys for threatened and endangered species?
- A. *There are specific requirements for the various permitting programs at EGLE. One example is that nonferrous metallic mining permit applications are required to include an EIA identifying potential impacts to conditions or features including, but not limited to, groundwater, surface water, threatened and endangered species, and cultural resources. A description of methodologies and information that demonstrates that the methodologies are appropriate and effective, or are widely used and generally accepted, is required in an*

Keweenaw Land Association Direct Lease Application - Question Summary

EIA. Additional information for EGLE permitting programs can be found here: EGLE Permits (michigan.gov).

Q. How have potential hydrologic impacts from exploration been assessed to date? Are additional impact assessments required prior to a lease being issued? If so, what types of assessment, who will perform it/them, and how can the landowner or a hydrologist hired by the landowner be involved in that process?

A. *A field survey will not be performed prior to granting a lease; however, one could be required prior to the issuance of a surface use permit on state forest land. A private landowner could do something similar as they are only required to provide reasonable access to the potential minerals below the surface.*

There are specific requirements for the various permitting programs at EGLE. One example is that nonferrous metallic mining permit applications are required to include an EIA identifying potential impacts to conditions or features including, but not limited to, groundwater, surface water, threatened and endangered species, and cultural resources. A description of methodologies and information that demonstrates that the methodologies are appropriate and effective, or are widely used and generally accepted, is required in an EIA. Additional information for EGLE permitting programs can be found here EGLE Permits (michigan.gov).

Q. If the surface owner wishes to procure a field survey prior to a lease being granted, will the state honor his request to do so even if it delays the lease process due to the seasonal nature of complete surveys for threatened and endangered species?

A. *During the parcel classification process, resource specialists perform a precursory review for T and E species. Any operations under a lease shall be subject to all applicable federal, local, and State laws, rules, and ordinances now or hereafter in force, which includes Part 365, Endangered Species Protection, Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.*

Q. Please provide DNR's materials regarding any threatened and endangered species thought to occur at this parcel as well as all documentation leading to the current classification and stipulations; let me know if I need to file a FOIA request.

A. *A FOIA request would need to be submitted for information regarding the location of threatened and endangered species. This can be done here.*

Q. What specific requirements would be incorporated in the lease to protect the warm water aquatic riverine resources related to the Peshekee River and associated wetlands? How is compliance monitored and enforced?

A. *On state forest land, appropriate BMPs would need to be adhered to and would be stated within the land use permit. Compliance is monitored and enforced through on-the-ground inspections by local staff. Land use permits would carry a bond to help ensure stipulations within the permit are followed.*

Keweenaw Land Association Direct Lease Application - Question Summary

Q. How can the DNR fulfill its mission of protecting surface resources like our wetlands and forests and all the organisms while leasing out the mineral rights?

A. *There are several means of addressing environmental concerns with metallic mineral development. For example:*

Parcels nominated for leasing go through a classification review by resources professionals to determine the appropriate level of surface use that should be allowed (see related information regarding lease classifications and stipulations for further information).

The Lessee is subject to all applicable existing or subsequent federal and state laws and rules.

The lease within itself is not an authorization to mine. Separate application(s) and approval(s) by EGLE are required prior to mining activity.

Use of DNR managed land requires separate application(s) and approval(s) by the DNR.

Q. The state of Michigan needs to gain greater control over the process, identifying and removing all nonleasable/non developable areas from consideration, in order to protect natural resources at the surface. The list of non-leasable areas should explicitly protect minerals found underneath state parks, wild and scenic rivers, critical habitat for endangered species, refuge areas, scenic areas, and all proposed/designated natural areas.

A. *Nonleasable parcels and designated natural areas are not available for lease. Stipulations are put in place to protect any leasable areas of concern. Stipulations are additional restrictions or requirements that are added to a lease. They are determined by the DNR based on a pre-lease classification review of nominated tracts. For example, the DNR may add a stipulation to the metallic lease to restrict development to certain times of the year. Other stipulations might address the placement of equipment or roads on a parcel, or address wildlife and other natural resource issues.*

Q. What environmental conditions can result in the field biologist recommending not to lease, and is that something that is appealable by the applicant?

A. *Parcels that are designated as natural areas are nonleasable. A nondevelopment classification is generally sufficient to protect the surface resources. A nonleasable determination cannot be appealed.*

Q. What are the specific Best Management Practices (BMPs) the state would incorporate into the lease? My understanding is that compliance to BMPs is voluntary; how would compliance be monitored and enforced?

A. *Stipulation 49 states: "Best Management Practices along wetlands, waterways, or steep slopes as per Sustainable Soil and Water Practices on Forest Land IC 4011 (Rev. 02/24/2009 and as amended) and approved in writing by the Local Management Supervisor."*

Keweenaw Land Association Direct Lease Application - Question Summary

Compliance is monitored and enforced on state forest land through on-the-ground inspections by local staff. Specific BMPs depend on the drilling site which may include, but are not limited to, appropriate stream buffers, silt fence, etc.

- Q. What specific requirements would be incorporated into the lease to protect the vernal/seasonal aquatic seepage and drainage resources? How is compliance monitored and enforced?
- A. *On state forest land, appropriate BMPs would need to be adhered to and would be stated within the land use permit. Compliance is monitored and enforced through on-the-ground inspections by local staff. Land use permits require a bond to help ensure stipulations within the permit are followed.*

Tribal/Cultural

- Q. What tribally important resources are considered during that review and classification? For example, nearby wild rice beds.
- A. *Staff check DNR and State Historic Preservation Office records for previously reported cultural resources and tribes are consulted throughout the leasing process. Some tribally important resources can be identified through a records search, although formal tribal consultation is the preferred method of discovery.*
- Q. It said cultural resource surveys may be subject to tribal review, and I'm wondering about the word may. Are some of those surveys not subject to tribal review, and I guess if not, I'm wondering why that would be?
- A. *The only cultural resources surveys that may not be subject to tribal review would be architectural, although they can be made available by request. Tribes are provided the opportunity to participate throughout the leasing process.*

Keweenaw Land Association Direct Lease Application - Question Summary

Next Steps

- Q. What are the next steps in this leasing process?
- A. *The next step for these applications will be DNR Executive review.*
- Q. Will the public be involved with any step of the approval process after this one?
- A. *There is an opportunity for additional public input before permits are issued. More information about EGLE programs can be found on their website: [Environment, Great Lakes, and Energy \(michigan.gov\)](#).*

Other

- Q. You need to have a map, not just of what the Keweenaw Land Association wants, put down all the past mining operation locations and all the current ones so we can compare them with the proposed 11,000 acres that the Keweenaw Land Association wants.
- A. *This information is available using the layers on the DNR Minerals Map. The map and a tutorial on how to find information you may be interested in can be located on the [DNR Minerals web page](#).*
- Q. Can I buy state of Michigan-owned severed minerals underneath my property?
- A. *The DNR oversees a program which allows for the opportunity to seek reunification of surface and mineral rights in some circumstances. More information regarding Mineral Purchase Applications can be found on the [DNR Minerals web page](#) under Purchases.*
- Q. What is the DNR doing to carefully assess these mine leases?
- A. *The DNR does not issue "mine leases." The applicant has applied for the exclusive opportunity to explore and/or develop state-owned minerals, further permissions and guidance would be required from EGLE as well as local agencies before intrusive surface activities would be allowed. The application is currently in the review process and no leases have been issued.*
- Q. Keweenaw Land Association initiated the process by requesting 10,631 acres. Actually, it seems that they may have requested more. It's unclear because when we look at the maps, the total area for the GIS shapes comes up to over 11,000 and we'd like that clarified at some point in terms of accurate review. The DNR Mineral lease nomination data on the Michigan GIS website includes Keweenaw Land Association lease nomination 1734, 1735, and 1751. When you add up the total area for each nomination and convert the total from square meters to acres, I ended up with a total acreage of 11,021.08 acres.
- A. *The applicant has requested to lease 10,631.43 of state-owned mineral rights. The GIS maps highlight entire quarter quarters even if the state only owns fractional or undivided*

Keweenaw Land Association
Direct Lease Application - Question Summary

mineral interests. A map and a tutorial on how to find information you may be interested in can be located on the [DNR Minerals web page](#).

Q. What is the process for seeking reclassification of these minerals to "nonleasable"?

A. *Nonleasable parcel classifications are determined by any of the following:*

- *Statute*
- *Deed restrictions*
- *Court orders*
- *Legal agreements*
- *Acquisition source restrictions*