

27.23-09 – Nonmetallic Mineral Leasing – State-owned Lands (Revised: 02/04/2010)

Supersedes:

Natural Resources Policy 2309 (dated) 11/081985)
DNR Procedures 2309.09 Nonmetallic Mineral Leasing Policy-State Owned Lands (3/11/1999)

Policy:

It shall be the policy of the Natural Resources Commission (NRC) to manage state-owned lands in a manner that protects and enhances the public trust. Nonmetallic minerals shall be developed in an orderly manner to optimize revenue consistent with other public interest and natural resource values.

Purpose:

The state of Michigan owns over 4.0 million acres of combined surface and mineral rights, and an additional 2.3 million acres of mineral rights only. Also, the state owns 25 million acres of Great lakes bottomlands. Under the provisions of PA 451 of 1994, Part 5 Section 502, the NRC and Director of the Department of Natural Resources (DNR) are responsible for managing these lands and mineral resources to ensure protection and enhancement of the public trust.

The DNR is authorized to enter into nonmetallic mineral leases through both the public oral or sealed bid auction (lease auction) and the direct lease process. Lease auctions may be scheduled, subject to demand.

NONMETALLIC MINERAL LEASING PROCESS PUBLIC SEALED BID OR ORAL AUCTION

WHO

DOES WHAT

Mineral and Land Management Section (MLMS) Staff

1. Sets a proposed lease auction date and associated nomination period for the nomination of state-owned lands to be considered for offering for lease through the public oral or sealed bid auction (lease auction) process. Lease auction type to be determined by MLMS.
2. Secures suitable location for a lease auction to be held. Staff should try to use no cost public facilities, if possible.
3. Makes arrangements for the services of a contract auctioneer and recording contractor, if applicable.
4. Publishes notice of open nomination period and nomination requirements/procedures through advertisement published in trade journals, through the posting of the information on the DNR web site and using appropriate mailing lists.

Nominators

5. Nominate state-owned lands to be offered for lease through the lease auction process by submitting nomination to MLMS, Forest, Mineral and Fire Management (FMFM), through the Cashier's Office, by letter, or on a form approved by the DNR with nomination fees of \$300.00 per 640 acres in up to four contiguous sections.

Cashier Office

6. Applies the process date and control number to the application letter and forwards the original documentation and a copy of the check submitted for nomination fees to MLMS staff.

MLMS Staff

7. Reviews the nomination to determine identity of nominator, description of land nominated, and to ensure the proper nomination fee has been paid. Enters this information into the Land Ownership Tracking System (LOTS), including the process date and control number applied by the Cashier's Office. The names and addresses of all severed surface owners of state mineral rights must be furnished to MLMS staff for notification, at the time of nomination.
8. Nominations that are incomplete and are not corrected by the end of the nomination period or are submitted after the nomination period will be returned to the nominator. Nomination fees are not refundable.
9. Provides a list of parcels to nominator to check for accuracy.
10. Coordinates the field review/lease classification process as outlined in the lease classification process, listed below.
11. Compiles a list of leasable lands and associated classifications.
12. Creates an auction list.
13. Mails out notification of intent to lease to township supervisors and county clerks of affected township and counties.
14. Publishes a notice of lands and their classifications considered for leasing, to provide for public comment and review. This notice is published in newspapers circulated in the counties where the lands are located, or in the major regional newspapers at least 30 days in advance of the DNR Director's decision to hold a lease auction.
15. Following a public comment period, prepares memo, for the Director, to hold a lease auction and approve parcel classification.

MLMS Staff and Management Assistant

16. Types and reviews memo for Director's approval and forwards to MLMS Section Manager for review and approval.
17. Publishes a notice in the DNR Calendar notifying the public that the DNR is seeking comments from the public and the Director's approval of a lease auction and parcel classifications. The lease auction must be publicized in the DNR Calendar for a period of at least seven days prior to Director's approval.

MLMS Section Manager

18. Reviews memo, makes any necessary changes and forwards to FMFM Chief's Executive Assistant.

FMFM Chief's Executive Assistant

19. Reviews and forwards memo to the Division Chiefs and Resource Management Deputy within the Resource Management Bureau for review and approval.

Resource Management Bureau

20. Reviews, signs and forwards memo to the Director for action.

DNR Director

21. Approves parcel classifications and the lease auction.

MLMS Staff

22. Mails or emails lease auction book or parcel list to Nominators.

23. Publishes lease auction book or parcel listing on the DNR website.

24. Publishes advertisement of lease auction in selected industry trade publications.

25. Conducts a public lease auction of state nonmetallic leases through the open oral auction or sealed bid process, as determined by the DNR. Auctions are held under the following standard terms and conditions, except as hereafter provided:

A. Registration of bidders

- 1) Only qualified bidders may participate in the lease auction.
 - a) Parties interested in bidding, or their authorized representative, must be present at the oral auction.
 - b) Bids may be submitted by individuals of legal age, a partnership, corporation or other entity qualified to do business in the state of Michigan. All prospective bidders must submit proof as follows:
 - i. Corporations or partnerships must provide MLMS with a copy of "Certificate of Good Standing" or "Certificate of Limited partnership."
 - ii. Persons doing business under an assumed name must provide MLMS with a copy of "Certificate of Persons Conducting Business Under Assumed Name."
 - iii. Individuals must provide MLMS with proof of legal age. This can be in the form of a birth certificate or valid driver's license.
 - iv. Entities listed on the DNR's Hold Action List are ineligible to participate in any lease auction as long as they remain in violation of lease terms.

B. Bidding (to determine the one time bonus payment).

- 1) The minimum bonus bid shall be determined by the DNR based on what nonmetallic product is to be leased when the royalty rate is predetermined.
- 2) The royalty, if not predetermined, will be the bid upon item. There will be a preset annual minimum royalty, but no minimum bonus.
- 3) Bid increments must in whole cents values.

C. Successful bidders.

- 1) Successful oral auction bidders must pay the entire bonus bid, plus the first year's rental payments, at checkout on the day of the lease auction. Payment can be made by cash, certified check, cashier's check, money order, or company check. Site drafts, in any format, will not be accepted.

- 2) Sealed bid lease auction successful bidders will be notified by mail and will need to pay the entire bonus bid plus the first year's rental payment or one half of the minimum royalty within 10 business days of notification, as applicable. If payment is not received as requested, the opportunity to lease will be passed on to the next highest bidder, at the option of the DNR.
- 3) Successful bidders must designate at checkout, the name of the individual or company to whom the lease will be issued. Leases will be issued to legal entities only.

26. Prepared lease auction summary.

MLMS Staff

27. Lease terms and rates.

- A. The lease term, rental, royalty and minimum royalty rates will be determined based on the type of nonmetallic mineral product to be leased.
- B. A lease performance bond shall be required of each lessee of state nonmetallic lease rights in order to assure faithful compliance with the terms and conditions of the lease. No lease will be issued without the minimum lease performance bond in place. The minimum bond to be maintained by each lessee, and the form of bond accepted, is determined as follows

1) Bond types accepted:

- a) Surety Bond
- b) Irrevocable Letter of Credit from a financial institution.
- c) Cash bond.
- d) Certificate of Deposit

2) Amount of bonding required:

AMOUNT OF BOND	MAXIMUM ACRES
\$10,000.00	0-500
\$20,000.00	501-2000
\$30,000.00	2001-5000
\$40,000.00	5001-10,000
\$50,000.00	10,001 or more

- C. Lessee must obtain and maintain liability and Worker's Compensation Insurance.
- D. The lease shall contain a maximum of one section (approximately 640 acres).
- E. An annual mining and reclamation or exploration plan must be approved prior to any mining or exploration activity.

MLMS Staff

28. Publishes a notice in the DNR Calendar of intent to issue lease(s).

29. Prepares memo to the Director for approval of leases, and inserts DNR Calendar/approval eligibility dates.

MLMS Management Assistant

30. Submits memo to MLMS Section Manager for review and approval.

Note: Direct leases can be approved by FMFM Chief as delegated by the DNR Director.

MLMS Section Manager

31. Reviews memo, makes any necessary changes and forwards to FMFM Chief's Executive Assistant.

32. Reviews and forwards memo to the Division Chiefs and Resource Management Deputy within the Resource Management Bureau for review and approval.

Resource Management Bureau

33. Reviews, signs and forwards memo to Director for action.

MLMS Staff

34. Publishes a notice in the DNR Calendar notifying the public that the DNR is seeking comments from the public, and Director's approval of lease issuance. Notice must be publicized in DNR Calendar for a period of at least seven days prior to Director's approval.

DNR Director

35. Approves issuance of leases.

MLMS Staff

36. Upon Director approval:

- A. Prepares Transportation and Natural Resources (TNR) Committee agendas.
- B. Forwards TNR Committee agenda and memos to board members, secretary and other parties requiring copies.

Note: If fully-executed memo is not available, forwards copy of memo signed by FMFM Chief, and submits final copy to Board Secretary when returned from Director's Office.

- C. Places copy of agenda and memo in pending file drawer, with copies to MLMS staff.
- D. Attends TNR Committee meeting to present proposed items and address any questions raised by committee members.
- E. Notifies MLMS Management Assistant of TNR Committee's decision.

TNR

37. Approves leases, and presents to State Administrative Board, for approval.

State Administrative Board

38. Approves leases.

MLMS Staff or Management Assistant

39. Generates lease documents by completing the following steps:
 - A. Establishes the effective date, to be 30 days after Board approval.
 - B. Enters lease term information into LOTS and creates lease document(s).
 - C. Inserts the Director approval date at the top of the signature page for each lease.
 - D. Prepares cover letter and sends leases to the proposed Lessees for execution.

Lessee

40. Signs and obtains signature from notary for each lease signed.
41. Returns lease to MLMS, within 30 days, along with any other requested information or material.

MLMS Staff

42. Reviews lease documents for any changes made, and ensures that signature pages have been properly signed and notarized.
43. Reviews Lessee bond information to ensure proper bonding is in place.
44. Reviews Hold Action List to determine if any proposed Lessee is on the List. No leases will be granted to entities on the Hold Act List.

MLMS Management Assistant

45. Finalizes lease by obtaining signature from MLMS Section Manager and notary.
46. Applies stamp reflecting Board approval date to lease signature pages.
47. Makes copy for MLMS files.
48. Finalizes cover letter(s) to Lessee.
49. Mails original lease and cover letter to Lessee.
50. Prepares lease file and files a copy of the fully executed lease in file.

DIRECT LEASE PROCESS

The Director may enter into a direct Lease for the following reasons:

- Completion of a mining operation area, reclamation of a pit or offset acreage to an existing pit.
- Consolidation of fractional interests owned by applicant
- To governmental agencies (restricted to government use only)
- To severed surface owners

WHO

DOES WHAT

Nominators

1. Nominate state-owned lands to be offered for the direct lease process by submitting a nomination to MLMS, FMFM, through the Cashier's Office, by letter or on a form approved by the DNR with nomination fees of \$300.00 per 640 acres in up to four contiguous sections.

Cashier's Office

2. Applies the process date and control number to the application letter and forwards the original documentation and a copy of the check submitted for nomination fees to MLMS staff.

MLMS Staff

3. Reviews the nomination to determine identity of nominator, description of land nominated, and to ensure the proper nomination fee has been paid. Enters this information into LOTS, including the process date and control number applied by the Cashier's Office. The names and addresses of all severed surface owners of state mineral rights must be furnished to MLMS staff for notification at the time of nomination
4. Nominations that are not complete are returned to the nominator for correction. Nomination fees are not refundable.
5. Provides a list of parcels to nominator to check for accuracy.
6. Coordinates the field review/lease classification process as outlined in the Lease Classification Process, listed below.
7. Compiles a list of leasable lands and associated classifications.
8. Mails out notification of intent to lease to township supervisors and county clerks of affected township and counties.
9. Prepares and requires applicant to publish a notice of lands and their classifications considered for leasing, to provide for public comment and review. This notice is published in newspapers circulated in the counties where the lands are located, or in the major regional newspapers at least 30 days in advance of the DNR Director's decision to issue direct leases.

Note: Direct leases can be approved by FMFM chief as delegated by the DNR Director.

10. See steps 28 through 51 from Auction Section above.

LEASE CLASSIFICATION PROCESS

Classification categories recognize the DNR's proprietary rights over the land surface, and take into account the effects development could have on current and future land uses and other resource values

Classification categories are:

1. Nonleasable: No mineral rights are to be leased. This classification should be only used where the greatest emphasis is on protection of surface resources.

Criteria and examples include:

- A. Lands with specific deed or other legal restrictions prohibiting leasing or mineral development.
 - B. Certain islands where mineral production facilities would be undesirable.
 - C. Certain unique or sensitive areas (e.g. designated or critical dunes).
2. Nondevelopment: Leasable mineral rights where no surface disturbance will be allowed. These leases allow underground development while protecting significant other resources from the impacts of surface development. This category shall be applied to a variety of culturally or ecologically sensitive lands or areas where no development is acceptable.

The nondevelopment lease classification shall apply to lands meeting the following criteria or reasons for nondevelopment, and other lands as designated by the Department:

- A. Public parks and recreation areas, campgrounds, fish hatcheries, and research areas; lands dedicated under Part 351, wilderness and Natural Areas, of the Natural Resources Environmental Protection Act 1994 PA 451, as amended (NREPA); and similar facilities and sites. This may include up to a one-half mile buffer around the boundaries of such facilities, as appropriate.
 - B. Wetlands, sand dunes, steep slopes, highly erodible soils and other natural features and areas that are ecologically sensitive, special or unusual.
 - C. Unique biotic communities as listed or verified by the Natural Heritage Program.
 - D. Critical habitat for endangered, threatened, special-concern or sensitive species that cannot be accommodated by a Development lease with special conditions.
 - E. Special or unusual recreation or scenic areas, including designated Natural Rivers.
 - F. Islands.
 - G. Areas with archaeological or historical features.
 - H. All Great Lakes inland lake or stream bottomlands.
 - I. Lands with likely dispersed occurrences of any of the above.
 - J. State lands with deed or other legal restriction that prohibit surface development. This may include military lands where the leasing for mineral exploration or development is at the option of the Department of Military and Veterans Affairs.
 - K. Blocks of land with significant contiguous acreage which are unusual or valuable for one or more of the following characteristics:
 - 1) Limited accessibility by vehicles
 - 2) Relatively low-level of current development (roads, facilities, etc.).
 - 3) Important for maintaining the continuity of wildlife travel corridors.
 - 4) Important to diverse plant and animal communities by limiting isolation and fragmentation of forest/wildlife habitats.
 - L. Buildings, surface uses, or developments of a nature or located so as to preclude the location of a mining operation area.
3. Development with Restriction: Leasable mineral rights on which surface use is available and allowed under specific conditions. In some cases where issues of concern, such as those listed under nondevelopment classification, can be sufficiently protected with special development conditions. Such conditions would be included in the lease. These "Development" leases may include language pertaining to, for example: limited

surface disturbance (nondevelopment areas within the leased parcel), access locations, seasonal use restrictions, or other criteria and reasons listed in the nondevelopment classification. Special conditions would be in addition to standard provisions of the lease, and should be specified in the classification process.

4. Development: Leasable mineral rights on which surface use is available and allowed. Standard lease provisions and conditions would apply to this category.

All lands considered for leasing shall be thoroughly reviewed by the Department for classification. Such classification should also proceed in cooperation with relevant federal land managing agencies whenever action of one might directly affect the mineral or surface interests of the other.

CLASSIFICATION PROCESS

WHO

DOES WHAT

MLMS Staff

1. Receives nominations of state-owned lands to be offered for lease.
(See Leasing Process above for nomination procedures)
2. Enters the nominated parcels into the computerized Land Ownership Tracking System (LOTS), which:
 - a. Completes a check on all nominated lands to ensure that the lands are state-owned and that they are not currently leased.
 - b. Reviews the DNR database to determine if nominated lands have been previously classified as nonleasable, and reviews them to see if they should be removed from consideration.
 - c. Automatically flags lands acquired with federal funding (Dingell Johnson, Pittman Robertson, Land and Water Conservation Funds, State Wildlife Grants, North American Conservation Act, National Wetlands Conservation Grant, Endangered Species Section 6 Land Acquisition Funds or Landowner Incentive Programs) with a nondevelopment classification.
 - d. Enters eligible nominations into the Parcel Review System (PRS).
3. Generates a list of eligible nominations from LOTS. Sends the list to all nominators to verify that all nominations have been entered correctly into the system.
4. Generates a list of all nominated lands acquired with federal aid funding or other federal interest. Forwards this list to Wildlife Division.

Wildlife Division

5. Sends the list of nominated lands acquired with federal funding to the US Fish and Wildlife Service, along with a request to that agency for approval to lease the lands with the nondevelopment classifications.

MLMS Staff

6. Sends a request to review and classify lands for leasing to non-DNR reviewing agencies:
 - a. Department of Military and Veterans Affairs (if applicable)
 - b. Natural Heritage Program Specialist
 - c. Office of the State Archeologist
 - d. USDA Forest Service (if applicable)

Non-DNR Reviewing Agencies

7. Reviews lists of nominated parcels relative to the programs that they administer. Either enters classification and comments into PRS or returns classification recommendations and supporting background information to MLMS, within the time period specified.

MLMS Staff

8. Reviews information submitted by non-DNR reviewers to ensure that classification reviews have been submitted by all non-DNR agencies by the due date. Contacts non-DNR reviewers if there is a questions regarding the classification recommendations submitted. Enters data into PRS, if needed.
9. Mails individual notifications to severed mineral surface owners whose lands are underlain by state-owned mineral rights which are nominated for lease with specified time frame and contact information. Forwards all comments to Upper Peninsula (UP) Field Coordinator, or Lower Peninsula (LP) Field Coordinator, if in the LP.
10. Makes PRS available to all DNR reviewers. The identity of DNR reviews is set in advance by the DNR Land Administering Divisions (LAD). Changes in the identity of DNR reviewers are provided to MLMS by the Chiefs of the LAD's as need arises.

DNR Reviewers

11. Review lands and enters preliminary classification recommendations and comments in PRS.

DNR Field Coordinators

12. Reviews classification recommendations entered by DNR reviewers, and
 - a. Changes classifications and adds comments where appropriate.
 - b. Resolves any classification disputes.
 - c. Designates a classification recommendation in PRS.

MLMS Staff

13. Uploads final field classifications from PRS into LOTS.
14. Offers the lands for lease as applicable, through the public lease auction or direct lease process.

See Leasing Process above.

RECLASSIFICATION PROCEDURES

WHO

DOES WHAT

Lessee

1. Submits to MLMS an application to change classification of a portion of an existing state lease, or an entire existing state lease (application for amendment to state of Michigan lease for the purpose of parcel reclassification).

Application contains:

- a. Legal description of lands requested for reclassification.
- b. Desired classification.
- c. Supporting information, including proposed location of development and reason for reclassification.
- d. Non-refundable application fee of \$2,000.00.
- e. Name and address of severed surface owner(s), if applicable.

MLMS Staff

2. Sends letter of acknowledgement to applicant indicating time frame of reclassification process.
3. Reviews title information to determine if lands were acquired with federal aid funds (including Dingell Johnson, Pittman Robertson, and Land and Water Conservation Funds and others listed previously in 3C (page 3))
 - a. If yes, reclassification to anything other than nondevelopment is denied. Letter explaining denial of reclassification is sent to applicant.
 - b. If yes, and reclassification is to the nondevelopment classification, send notification to Wildlife Division so that they can notify US Fish and Wildlife Service of classification change.
 - c. If lands were not acquired with federal aid funds, proceed to next step.
4. Reviews classification history to determine if current classification is a result of recommendations from non-DNR reviewers.
5. Sends notice to severed surface owner, if applicable, of possible reclassification of parcel with specified time and contact for comments.
6. Publishes reclassification request on DNR on-line maps.
7. Sends a request to review parcels proposed for reclassification to non-DNR reviewing agencies.
 - a. Department of Military and Veterans Affairs (if applicable)
 - b. Natural Heritage Program Specialist
 - c. Office of the State Archeologist
 - d. USDA Forest Service (if applicable)

Non-DNR Reviewing Agencies

8. Reviews list of parcels proposed for reclassification relative to the programs that they administer. Either enters classification and comments into PRS or returns classification recommendations and supporting background information to MLMS, within the time period specified.

MLMS Staff

9. Reviews information submitted by non-DNR reviewers to ensure that reclassification reviews have been submitted by all non-DNR agencies by the due date. Contacts non DNR reviewers if there is a question regarding the reclassification recommendations submitted. Enters data into PRS, if needed.
10. Forwards all surface owner and public comments to Upper Peninsula (UP) Field Coordinator, or Lower Peninsula (LP) Field Coordinator, if in the LP.
11. Makes PRS available to all DNR reviewers. The identity of DNR reviewers is set in advance by the DNR Land Administering Division (LAD). Changes in the identity of DNR reviewers are provided to MLMS by the Chiefs of the LAD's as need arises.

DNR Reviewers

12. Reviews lands and enter preliminary reclassification recommendations and comments into PRS.

DNR Field Coordinators

13. Reviews reclassification recommendations entered by DNR reviewers, surface owner and other public comments and
- a. Changes reclassifications and add comments, where appropriate.
 - b. Resolves any reclassification disputes.
 - c. Designates a reclassification recommendation in PRS.

MLMS Staff

14. Uploads final field reclassifications from PRS into LOTS. If reclassification has been denied, sends applicant a letter explaining denial.

If reclassification has been approved:

- a. Determines if any additional bonus must be paid to the DNR. Additional bonus due for the change in classification is determined by calculating the average per acre difference between development and nondevelopment leases.
- b. Notifies the applicant of the terms of the change in classification, including any restrictions, additional bonus to be paid, public notice requirements, etc. If applicant agrees to the terms of the change in classification and submits the required additional bonus, if any, continues the process.
- c. Prepares and requires applicant to publish notices of lands and proposed reclassifications considered for leasing in newspapers circulated in the counties where the lands are located, or in major regional newspapers, at least 30 days in advance of the FMFM Chief's decision to reclassify the lands. The purpose of the notice is to provide the public adequate opportunity to review and comment on the reclassification of the lands. The classification of any description shall be determined by the DNR.
- d. Mails notice to the township supervisors in the township offices and to the county clerk in the county where the lands for lease are located, at least 30 days in advance of the FMFM Chief's decision to reclassify the lands. This notification will provide local units of government the opportunity to review and comments.
- e. Mails notice to DNR offices in appropriate locations for posting in public areas.
- f. Prepares memo to Chief, FMFM for approval of reclassification,
- g. Submits reclassification information for publication in the DNR Calendar, at least 30 days prior to reclassification approval.
- h. Prepares lease amendment showing the change in classification.
 - i. Incorporate any special provisions stipulated by DNR staff.
 - ii. If only part of the lease is being reclassified, lease may need to be split into separate leases.

FMFM Chief

15. Approves the amendment reclassifying a portion or all of the leased premises.

MLMS Staff

16. Mails amendment to Lessee for execution and return within 30 days.

Lessee

17. Executes the amendment and returns it to MLMS.

MLMS Section Manager

18. Executes the amendment on behalf of the DNR.

MLMS Staff

19. Mails one copy of the fully-executed amendment to the Lessee.

20. Posts lease worksheet and LOTS with changes.

21. Notifies Revenue Verification Unit of MLMS of amendment and change in lease classification.

22. Files fully executed amendment in lease file.