

27.23-15 - Oil and Gas Lease Classification Procedure (Issued: 07/11/2005)

Supersedes

- DNR Department Procedure 2315.15 - Oil and Gas Lease Classification Procedure, Issued 09/14/2001.

NOTE: The content of this document has not been revised since Issued 09/14/2001..

The only change involves the conversion and numbering to the current DNR Policies & Procedures Manual Structure.

Approval Signature

K. L. Cool, Director, Department of Natural Resources

Supersedes

- DNR Department Procedure 2306.6 – OIL AND GAS LEASING POLICY AND LEASE AMENDMENTS (dated May 11, 1979)
- Rescinded Natural Resources Commission Policy 2306 (dated April 13, 1995)

Policy:

It shall be the policy of the Natural Resources Commission (NRC) to manage State-owned minerals in a manner that protects and enhances the public trust. Surface and mineral ownership may be consolidated when it is in the best interests of the State. 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 3.8 million acres of combined surface and mineral rights, and an additional 2.1 million acres of mineral rights only. Also, the State owns 25 million acres of Great Lakes bottomlands. Under the provisions of P. A. 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.

Classification categories recognize the Department's proprietary rights over the land surface, and take into account the effects oil and gas exploration and potential development could have on current and future land uses and other resource values. Classification categories are:

1. Nonleasable: No mineral rights are to be conveyed. This classification does not protect minerals from drainage by others and should be used only where the greatest emphasis on protection of surface resources is pertinent.

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 drilling sites will be allowed. These leases prevent drainage by others (and the subsequent loss of State revenue), 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 waters where no development is acceptable. The "Development" category should also be considered for some of these criteria and reasons where concerns can be adequately addressed through special lease conditions.

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

- A. Public parks and recreation areas, campgrounds, fish hatcheries, and research areas; lands dedicated under the wilderness and natural areas (Act, P.A. 241 of 1972); 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 erodable 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. This includes all Kirtland's Warbler Critical Habitat.
- 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 restrictions 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 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 compatible drilling site.
3. Development: Leasable mineral rights on which surface drilling sites are available and allowed. Standard lease provisions and conditions would apply to this category.
4. Development with Restriction: Leasable mineral rights on which surface drilling sites are 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 may be included in the lease. These "Development" leases may include language pertaining to, for example: limited surface disturbance (nondevelopment areas or limitation on the number of drilling 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.

All lands considered for leasing shall be thoroughly reviewed by the Department for classification. Whenever possible, lease classification, lease-unit designation, and surface-use permitting should proceed in concert with comprehensive planning of all land management and uses. 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.

Related Procedures:

- Oil and Gas Leasing Procedure No. [27.23-14.](#)
- Oil and Gas Lease Maintenance Procedure No. [27.23-18.](#)

CLASSIFICATION PROCEDURE

WHO

DOES WHAT

MINERAL AND LAND MANAGEMENT SECTION (MLMS) STAFF

1. Receives nominations of State-owned mineral rights to be offered for lease.
See Oil and Gas Leasing Procedure No. [27.23-14](#) for nomination procedures.
2. Compiles a list of nominated parcels from all nominations received within the open nomination period, or from direct lease applications.
3. Enters the nominated parcels into the computerized land data base system, which:
 - a. Completes a title check on all nominated lands to ensure that the mineral rights are State-owned and are not currently leased.
 - b. Reviews the DNR Comprehensive Plan to determine if nominated lands have been previously classified as nonleasable, and removes those from consideration.
 - c. Automatically flags lands acquired with Federal Funding (Dingell Johnson, Pittman Robertson, or Land and Water Conservation Funds) with a nondevelopment classification.
 - d. Enters eligible nominations into Automated Field Review System.
 - e. Makes automated field review system available on-line to all non-DNR reviewers. Identity of non-DNR reviewers is set in advance by the various agencies through MLMS.
4. Generates a list of eligible nominations from the computerized land data base system. Sends the list to all nominators to verify that all nominations have been entered into the system.
5. Generates a list of all nominated lands acquired with Federal Aid funding. Forwards this list to Wildlife Division.

WILDLIFE DIVISION

6. Sends the list of nominated lands acquired with Federal Funding to the U. S. Fish and Wildlife Service, along with a request to that agency for approval to lease the lands with the Nondevelopment classification.

FOREST, MINERAL AND FIRE MANAGEMENT (FMFM) CHIEF

7. Sends a request to review and classify lands for oil and gas leasing to non-DNR agencies:

- a. Natural Heritage Program
- b. Department of Military Affairs
- c. Department of State
- d. U.S. Forest Service
- e. Land and Water Management Division, Department of Environmental Quality

Request for review, notifies the non-DNR agencies that the automated review system is available on line for their use and instructs the reviewers to make recommendations for classification of the lands for oil and gas exploration and development. Individual parcel classification recommendations must be entered into the automated system within a specified time period.

NON-DNR REVIEWING AGENCIES

8. Review lists of nominated parcels relative to the programs that they administer. Enter classification recommendations and supporting background information into the automated field review system, within the time period specified.

MLMS STAFF

9. 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 question regarding the classification recommendations submitted.
10. Makes automated Field Review System available on line to all DNR reviewers. The identity of DNR reviewers is set in advance by the DNR Land Administering Divisions. Changes in the identity of DNR reviewers are provided to MLMS by the Chiefs of the Land Administering Divisions as need arises.

FMFM CHIEF

11. Sends a notice that the Automated Field Review System is on line along with request for review and classification of lands for oil and gas leasing, within a specified period of time, to the Chiefs of:
 - A. Wildlife Division
 - B. Fisheries Division
 - C. Parks and Recreation Division (PRD)
 - D. FMFM field staff

Classification recommendations are based on the four specific categories as outlined in the Procedure Purpose stated above.

12. Sends a notice to Office of Land and Facilities (OLAF), with a request for OLAF staff to review the lands nominated for oil and gas leasing within a specified period of time. Review is to identify lands

that may be part of an active exchange, or other transaction that would influence offering the lands for lease for oil and gas development.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES (MDNR) REVIEWERS

13. Review lands and enter preliminary classification recommendations and comments into the automated system.

OFFICE OF LAND AND FACILITIES (OLAF) STAFF

14. Review lands and provide comments on active land transactions.

MDNR REVIEW COORDINATORS

15. Review classifications recommendations entered by MDNR reviewers, and
 - a. Change classifications and add comments where appropriate.
 - b. Resolve any classification disputes.
 - c. Designate a final classification into the Automated System.

MLMS STAFF

16. Creates a list of lands and associated classifications that may be leased for oil and gas exploration and development purposes.
17. Publishes notices of lands and proposed classifications considered for leasing in newspapers in the counties where the lands are located, and in major regional newspapers, at least 30 days in advance of the DNR Director's decision to hold a lease auction or lease the lands through the direct lease process. The purpose of these notices is to provide the public adequate opportunity to review and comment on the classification of the lands. In the event anyone disagrees with the proposed classification of any description, that person shall have the opportunity to request a change in classification. The classification of any description shall be determined by the Department.
18. Mails list of lands and proposed classifications to the Township Supervisors in the Township Offices where the lands for lease are located, at least 30 days in advance of the DNR Director's decision to hold a lease auction, or lease the lands through the direct lease process. This notification will provide local units of government the opportunity to review and comment on the proposed lease classifications.
19. Offers the lands for lease as applicable, through the public auction or direct lease process. See Oil and Gas Leasing Procedure No. [27.23-14](#) for leasing procedures.

RECLASSIFICATION PROCEDURE

WHO

DOES WHAT

LESSEE

1. Submits to MLMS an application to change classification of a portion of an existing State Oil & Gas Lease, or an entire existing State Oil & Gas Lease (Application for amendment to State of Michigan Oil and Gas Lease for the purpose of parcel reclassification PR 6045).

Application contains:

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

MLMS STAFF

2. Enters descriptions of lands for which reclassification has been applied for into the Automated Field Review System.
3. Sends letter of acknowledgement to applicant indicating time frame of reclassification process.
4. Reviews title information to determine if lands were acquired with Federal Aid Funds (including Dingell Johnson, Pittman Robertson, and Land and Water Conservation Funds). a) If yes, reclassification to anything other than nondevelopment is denied. b) If yes, and reclassification is to the nondevelopment classification, send notification to Wildlife Division so that they can notify U.S. Fish and Wildlife Service of classification change. Letter explaining denial of reclassification is sent to applicant. c) If lands were not acquired with Federal Aid Funds, proceed to next step.
5. Reviews classification history to determine if current classification is a result of recommendations from Non-DNR reviewers.
6. Sends notice to severed surface owner, if applicable, of possible reclassification of parcel.
7. Publishes reclassification request on DNR website.

FMFM CHIEF

8. Sends a request to review for reclassification to the Natural Heritage Program. If other non-DNR agencies provided input in the current classification of the lands, a request and reclassification is

also sent to the other non-DNR agency or agencies. Non-DNR agencies that may potentially be involved in a reclassification are:

- a. Natural Heritage Program
- b. Department of Military Affairs
- c. Department of State
- d. U.S. Forest Service
- e. Land and Water Management Division, Department of Environmental Quality.

Request includes a copy of supporting materials submitted by applicant for use by the reviewer(s) and a request that the review be completed by a specific date.

NON-DNR REVIEWING AGENCIES

9. Reviews the information submitted by the applicant and follows classification procedures as outlined above.
10. Enters the classification recommendation and supporting background information into the automated field review system, within the time period specified.

MLMS STAFF

11. Reviews information submitted by Non-DNR reviewers to ensure that classification reviews have been submitted by all applicable non-DNR agencies by the due date. Contacts non-DNR reviewers for clarification if there is a question regarding the classification recommendations submitted.
12. Makes automated Field Review System available on-line to all DNR reviewers. Identity of DNR reviewers is set in advance by the DNR Land Administering Divisions. Changes in the identity of DNR reviewers is provided to FMFMD by the Chiefs of the Land Administering Division as need arises.

FMFM CHIEF

13. Sends a notice that a reclassification request has been made, along with a request that the lands be reviewed and reclassified through the Automated Field Review System within a specified period of time. This notice and request is sent to the Chiefs of:
 - a. Wildlife Division
 - b. Fisheries Division
 - c. Parks and Recreation Division (PRD)
 - d. FMFM Field Staff

Classification recommendations are based on the four specific categories as outlined in the Procedure Purpose.

MDNR REVIEWERS

14. Review lands and enter preliminary classification recommendations and comments into the automated system.

MDNR REVIEW COORDINATORS

15. Review classification recommendations entered by the MDNR reviewers, and
 - a. Change classifications and add comments where appropriate.
 - b. Resolve any classification disputes.
 - c. Designate a final classification into the Automated System.

MLMS STAFF

16. Reviews final classification recommendations submitted by MDNR Reviewers. 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 Department. Additional bonus due for the change in classification is determined by calculating the average per acre difference between development and nondevelopment leases sold at the auction in which the lease was bid in.
- b. Notify 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, continue the process. Otherwise, send a note to the applicant indicating that the request for reclassification has been denied, stating the reasons for the denial.
- c. Mail notices of pending change in lease classification at least 30 days prior to reclassification approval to:
 - 1) Township Supervisor in the Township where the lands are located
 - 2) Surface owner (where State owns minerals only)
- d. Prepare and publish a public notice of the proposed lease Classification at least 30 days prior to reclassification in:
 - 1) A newspaper published in the county where the lands are located.
 - 2) In a regional newspaper.

- e. Prepares memo to Chief, FMFMD for approval of reclassification.
- f. Submits reclassification information for publication in the Department Calendar, at least 30 days prior to reclassification approval.
- g. Prepare lease amendment showing the change in classification.
 - 1) Incorporate any special provisions stipulated by DNR staff.
 - 2) If only part of the lease is being reclassified, lease must be split into separate parent and child leases; see Oil and Gas Lease Maintenance Procedure No. [27.23-18](#), for procedures for splitting leases, following approval by FMFMD Chief.

FMFM CHIEF

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

MLMS STAFF

- 18. If the change in classification results in payment of additional bonus, the lease amendment must be submitted to the Transportation and Natural Resources Committee and the State Administrative Board for approval.
 - a. Submits amendment to Transportation and Natural Resources Committee and the State Administrative Board for approval.
 - b. Attends TNR meeting to answer questions concerning amendment.
 - c. Files approved copy of amendment in lease file.
 - d. Sends the amendment to the Lessor to execute.

TRANSPORTATION AND NATURAL RESOURCES (TNR) COMMITTEE

- 19. Approves amendment and submits it to the State Administrative Board.

STATE ADMINISTRATIVE BOARD

- 20. Approves amendment and submits approval to FMFMD.

LESSEE

- 21. Executes the amendment and returns it to MLMS.

MLMS SECTION MANAGER

- 22. Executes the amendment on behalf of the Department.

MLMS STAFF

- 23. Mails one copy of the fully executed amendment to the Lessee.
- 24. Posts lease worksheet and REIS with changes.

25. Notifies Revenue Verification Unit of MLMS of amendment and change in lease classification.
26. File fully executed amendment in lease file.