



Ensuring the Waters of the Great Lakes Basin Are
Healthy, Public, and Protected for All

August 31, 2022

Mr. Daniel Eichinger, Director
Michigan Department of Natural Resources
Executive Division
P.O. Box 30028
Lansing, MI 48909

Mr. Tom Baird, Chair
Michigan Natural Resources Commission
P.O. Box 30028
Lansing, MI 48909

Sent by email to: DNR-Camp-Grayling@Michigan.gov; NRC@michigan.gov

RE: 162,000-acre Camp Grayling Lease Expansion Proposal

Dear Director Eichinger and Chairman Baird:

Thank you for the opportunity to comment on the Michigan National Guard's proposal to lease 162,000 acres of state forest land to conduct military training exercises. As a law and policy center committed to protecting Michigan's public trust resources and uses, For Love of Water ("FLOW") is writing to share our concerns about what would be the largest single state land lease in Michigan's history. Our primary interest at this time is to ensure that the Michigan Department of Natural Resources ("DNR") upholds the rule of law in reviewing this proposal.

As a threshold matter, it does not appear that DNR has statutory authority to lease state land for military uses under DNR's Organic Act of 1917, Part 5, NREPA, MCL 324.501 *et seq.* DNR's August 12, 2022 FAQ suggests that MCL 324.503(2) and (15) provide such authority, but the agency's explanation does not consider the relevant statutory limitations on DNR's otherwise broad authority. Section 503(2)'s conferral of power and jurisdiction upon DNR is constrained by Section 503(15), which provides:

The department may lease lands owned or controlled by the department or may grant concessions on lands owned or controlled by the department to any person for any purpose that the *department determines to be necessary to implement this part.*

The italicized language (emphasis is ours) underscores that DNR does not have blanket authority to lease state lands for any purpose. The lease must be supported by an agency determination that the purpose is "necessary to implement this part." As DNR's mandatory duties under Section 503(1) do not include supporting military uses, it is not clear how DNR could determine that leasing state lands for such a purpose is necessary to implement the Organic Act.

Even if DNR had authority to lease state lands for military uses, the agency may not execute such a lease without first complying with its prescribed statutory duties. Section 503(1) states:

Before issuing an order or promulgating a rule under this act that will designate or classify land managed by the department for any purpose, the department shall consider, in addition to any other matters required by law, all of the following:

- (a) Providing for access to and use of the public land for recreation and tourism.
- (b) The existence of or potential for natural resources-based industries, including forest management, mining, or oil and gas development on the public land.
- (c) The potential impact of the designation or classification on private property in the immediate vicinity.

In addition to the factors set forth in subsections (a) through (c), DNR must consider “other matters required by law.” A mandatory consideration here is Section 1705(2) of the Michigan Environmental Protection Act (“MEPA”), which provides:

In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

It is well established that 1705(2) is an unequivocal and independent statutory requirement. *See Highway Commission v Vanderkloot*, 392 Mich. 159, 181-83 (1974); *Buggs v. Michigan Pub. Serv. Comm’n*, No. 315058, 2015 WL 159795, at *9 (Mich. Ct. App. Jan. 13, 2015). It is equally clear that the issuance of orders or performance of similar actions such as the leasing of state lands is “conduct” under MEPA. *See Environmental Action Council v Natural Resources Comm’n*, 405 Mich 741, 751 (1979) (holding that a consent order by the Natural Resources Commission that would lead to the applications for permits for 10 test oil and gas wells constituted “conduct” within the meaning of MEPA). Given that MEPA compliance is also essential to meeting DNR’s public trust and constitutional obligations, *see People v Babcock*, 38 Mich. Ct. App. 336, 350-351 (1972), DNR must comply with MEPA to avoid making a legal and policy “blunder.” *See Michigan Oil Co. v Nat. Res. Comm’n*, 71 Mich. App. 667 (1976).

Because DNR has not yet complied with its proposal review obligations under the Organic Act and MEPA, FLOW lacks sufficient information to comment on the content of any lease to effectuate the proposal. FLOW respectfully requests that DNR provide additional public comment periods to inform its mandatory analyses under the Organic Act and MEPA.

Respectfully,



Zach Welcker
Legal Director, For Love of Water