

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Division of Natural Resources TITLE NUMBER: 58

CITE AUTHORITY: 20-1-7(30) and 20-1A-1 to 20-1A-9

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: Sale, Lease, Exchange or Transfer of Lands or Minerals

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

**TITLE 58
LEGISLATIVE RULES
DIVISION OF NATURAL RESOURCES**

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**SERIES 2
RULES CONTROLLING THE PUBLIC LAND CORPORATION'S
SALE, LEASE, EXCHANGE OR TRANSFER OF
LANDS OR MINERALS**

SECRETARY OF STATE
WEST VIRGINIA

§58-2-1. General.

- 1.1. Scope and Purpose. - - This rule provides information and guidance for the sale or lease of lands or minerals by the Public Land Corporation.
- 1.2. Authority. - - West Virginia Code §20-1A-1 through §20-1A-9.
- 1.3. Filing Date. - -
- 1.4. Effective Date. - -

§58-2-2. Definitions.

- 2.1. "Public Land Corporation" means a unit of the Division of Natural Resources vested with the title of the State of West Virginia in certain public lands, including the beds of West Virginia's rivers and streams.
- 2.2. "Board of Directors" means the governing body of the Public Land Corporation.
- 2.3. "Secretary" means the Executive Secretary of the Public Land Corporation, Chief of the Real Estate Management Section of the Division of Natural Resources.
- 2.4. "Competitive Sale" means a sale to the highest responsible bidder at a public offering utilizing sealed bids.
- 2.5. "Modified Competitive Sale" means a sale to a government entity or adjoining landowner who meets the highest bid at a public offering.
- 2.6. "Direct Sale" means a sale without competitive bidding to an adjoining landowner who offers to pay the "fair market value" or a sale to a government entity at less than "fair market value".
- 2.7. "Fair market value" means the value determined by an appraisal made by an independent person or firm chosen by the Secretary.

2.8. "Independent Appraisal" means an appraisal performed by a West Virginia certified general appraiser using the principles contained in the current issue of "Uniform Standards of Professional Appraisal Practice" published by The Appraisal Foundation.

§58-26-3. Rules for Sale, Exchange or Transfer of Land or Minerals.

3.1. The Secretary of the Public Land Corporation shall present to the Board of Directors of the Public Land Corporation any proposed land sale, exchange, transfer or lease of land or minerals; except when leasing minerals (sand, gravel, or coal) dredged from the beds of West Virginia's rivers and streams. If the Board of Directors authorizes consideration of the project, then the Secretary will have one year to gather the information needed and present it to the Board of Directors to make a final decision as follows:

3.1.a. Determine the "fair market value" of the land or minerals through an independent appraisal or assistance from an independent mineral consultant;

3.1.b. The agency that is proposing the sale or lease must prepare and reduce to writing the reasons and supporting data regarding the sale, lease, exchange or transfer of land or minerals. The written reasons required under this section shall be available for public inspection at the office of county clerk at the county courthouse of each county in which the affected lands or minerals are located during the two successive weeks before the date of the required public hearing;

3.1.c. Provide for a public hearing to be held at a reasonable time and place within each county in which the affected lands or minerals are located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the corporation's representative;

3.1.d. At least thirty days before the public hearing, provide notice to all members of the Legislature, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands or minerals are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands or minerals are located;

3.1.e. Publish a notice of the required public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code and the publication area shall be each county in which the affected lands or minerals are located. The public hearing will not be held until at least 14 days after the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected lands or minerals;

3.1.f. Post the copy of the required notice in a conspicuous place at the affected land for members of the public to observe. The notice (8 1/2" x 11") shall remain posted for two successive weeks prior to the date of the public hearing;

3.1.g. Appoint a representative of the Public Land Corporation to conduct the public hearing. The representative shall be knowledgeable of all the facts and circumstances surrounding the proposed sale, lease, exchange or transfer. The representative conducting the public hearing shall make the results of the hearing available to the Public Land Corporation for its consideration at least five days prior to the Board of Directors making final decisions regarding the affected lands or minerals. The representative shall make a report of the public hearing available for inspection by the public, or, upon written request of any interested parties. A written copy will be provided to the president of the county commission, county clerk, and any municipality in which the effected lands may be located; and any individual requesting a copy of same within thirty days following the public hearing; and

3.1.h. If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (e) of section 3.1 of this rule does not reflect the true, fair market value, the Public Land Corporation shall have another appraisal completed.

3.1.i. If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet any of the criteria set forth below, the Public Land Corporation may not proceed with the sale or exchange of exchange of the land without judicial approval.

3.1.i.1. Disposal Criteria

3.1.i.1.A. The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;

3.1.i.1.B. Disposal of the tract serves important public objectives including, but not limited to, expansion of communities and economic development which cannot be achieved on lands other than public lands and which clearly outweigh other public objectives and values including, but not limited to, recreation and scenic values which would be served by maintaining the tract in state ownership; or

3.1.i.1.C. The tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another state department or agency;

3.1.j. The Public Land Corporation may not sell, lease as lessor, exchange or transfer lands or minerals for at least 30 days following the public hearing or fifteen days after the report of the public hearings are made available to the public in general whichever is later.

3.1.k.. With the approval of the Board of Directors, the Chairman shall sign the contract or lease.

§58-2-4. Bidding Procedures for Land Sales.

4.1. Sales, exchanges or transfers of public lands by the Public Land Corporation will generally be conducted under competitive bidding procedures. The Secretary may sell lands by modified competitive bidding or by direct sale when it furthers public policies including a preference for users. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers: local government entities which are in the vicinity of the lands, and/or adjacent landowners as a potential purchaser.

4.2. Competitive bid sales will be used:

4.2.a. Where the lands are assessable and usable regardless of land ownership.

4.2.b. The lands are within a developing or urbanizing area and land values are increasing due to the location of the land and interest on the competitive market.

4.2.c. Adjoining landowners or local government entities may use the modified competitive sales to meet the high bid at the public sale. Lands otherwise offered under this procedure would normally be public lands not located near urban expansion area, or not located near areas with rapidly increasing land values, and where existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

4.2.d. Direct sale may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by local governments.

4.2.e. Lands will not be offered for sale by "modified competitive sales" or "direct sale" unless the Public Land Corporation makes a written finding of justification for use of an alternative bidding procedure.

4.2.f. Subject to the bidding procedures set forth herein, the Public Land Corporation is authorized, at its discretion, to sell public lands subject to rights-of-way, restrictive covenants or easements retained by the Public Land Corporation, limiting the use of such lands to purposes consistent with the use of adjoining or nearby lands owned by the Public Land Corporation.

4.2.g. If lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale. However, if the provisions of the rules are complied with and no bid equal to or in excess of the fair market value is received, the Public Land Corporation may, at any time during a period of six months after the opening of the bids, sell the property, but the contract price may not be less than the fair market value.

4.2.h. Public lands may be sold, exchanged or transferred to any federal agency or to the state or any of its political subdivisions for less than fair market value if, upon a specific

written finding of fact, the corporation determines that such a transfer would be in the best interests of the Public Land Corporation and the state.

§58-2-5. Competitive Bidding and Notice Procedures for the Lease of Minerals.

5.1. The leasing of minerals under public lands will be conducted under competitive bid procedures and leased for no less than fair market value. If no bid equal to or in excess of the fair market value is received, the Public Land Corporation may, at any time during a period of six months after the opening of the bids, lease or contract for the development of the minerals, but the lease or contract price may not be less than the fair market value.