

MATERIAL PIT LEASE GUIDELINES

...*DRAFT* JULY 2010 ...

These guidelines are not meant to be definitive procedures. Some of the methods and duties contained herein, may have been changed, eliminated, or redirected to other offices; but not reflected in these guidelines. This is a draft document.

1. BACKGROUND

Gravel, the main source for road construction aggregates, should be readily available in sufficient quantity, of the required quality and at a reasonable cost for projects scheduled throughout the state. This calls for a statewide approach to gravel procurement by Mn/DOT.

Mn/DOT, through its leasing program and as a major owner of gravel pits helps to assure adequate supply and market competition. Each contractor has the chance to bid competitively with the knowledge that at least the required amount and quality of gravel will be available.

Over the past 80 years, the State of Minnesota has acquired over 400 gravel pits in fee ownership or by perpetual easement. These sites contain almost 5800 acres of land and haul roads located throughout the state. Also during this time Mn/DOT has acquired leasehold interests in over 4000 gravel production sites, located mostly on privately owned land.

Historically, Mn/DOT has kept approximately 50 leases active at any given time; recently the number has been closer to 10. As new construction projects are conceived and planned, any one or more of the inactive leases may be re-negotiated to fill current needs for aggregate.

2. AUTHORITY

Minnesota Statutes § 160.11, Sub.1 and 161.20 authorize the Commissioner of Transportation to acquire aggregate and borrow pit sites.

A. 160.11 ROAD OR STREET BUILDING MATERIALS

Subdivision 1. Acquisition of lands. When the commissioner of transportation, any county board, town board, or governing body of any city, each hereinafter referred to as road authority, shall deem it necessary for the purpose of building or repairing public roads or streets within its jurisdiction, it may procure by lease, purchase, gift, or condemnation in the manner provided by law any lands within the state containing any materials suitable for road or street purposes, together with the right-of-way to the same of sufficient width to allow trucks or other vehicles to pass, and on the most practicable route to the nearest public road or street.

B. 161.20 GENERAL POWERS OF THE COMMISSIONER

Subdivision 2. Acquisition of property; buildings;...contracts. The commissioner is authorized to acquire by purchase, gift, or by eminent domain proceedings as provided by law, in fee of such lesser estate as the commissioner deems necessary, all lands and properties necessary in laying out, constructing, maintaining, and improving the trunk highway

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system...; [and] to purchase all road material...necessary for the construction, maintenance, and improvement thereof;...

Minnesota Statute 160.11, Sub.2 provides authority for any road authority to sell to any other road authority any earth material suitable for road purposes except that certain restrictions apply to the Commissioner of Transportation.

C. 160.11 ROAD OR STREET BUILDING MATERIALS

Subdivision 2. Sale by road authority. Any such road authority may engage in the processing of crushed rock or other road or street building material for use on public roads or streets within its jurisdiction; and any such road authority may by agreement sell to any other road authority any rock, crushed rock, processed sand or gravel, unprocessed or pit-run sand or gravel, or other earth material suitable for road or street purposes, upon terms and conditions as may be mutually agreed upon by the parties, except that the Commissioner of Transportation shall not sell processed gravel, processed sand, or crushed rock.

Minnesota Statute 161.411 allows the commissioner to sell certain surplus earth materials to a political subdivision or public agency under specific conditions.

D. 161.411 SALE OF SURPLUS EARTH MATERIALS.

Whenever the plans for the construction of a trunk highway indicate that there will be a surplus of earth materials from the roadway excavation of such trunk highway, and a political subdivision or public agency of the state indicates that it has use for all or part of such surplus earth materials, the commissioner of transportation may enter into an agreement for the sale of such surplus materials on an equitable basis to such political subdivision or agency. Prior to such agreement the state in its proposal shall require a bid item reflecting either an increased or decreased cost to the state by reason of the proposed sale of such material. If such bid item indicates an increased cost to the state, the materials shall not be sold for less than such increased cost.

3. MATERIALS POLICY**A. 1602 NATURAL MATERIAL SOURCES**

Mn/DOT's road construction procedural authority, Standard Specifications for Construction, Section 1602 describes the relationship between the state and the Contractor regarding the use of an aggregate source. It is important that everyone associated with the process be familiar with it and any associated supplemental Special Provisions. However, it should be remembered that the owner of a leased pit is not bound by Section 1602 and if there is any conflict between its terms and the provisions of the lease, the lease will govern. For this reason, the state assures that copies of the lease are made available to the contractors for review as part of the bid procedure.

B. REMOVAL OF MATERIAL FROM LEASED PITS

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There are two types of leases negotiated by the Department for the taking of materials from privately owned pits. These are exclusive and non-exclusive leases. The engineer and the inspectors must see that materials are removed only in accordance with the terms of the lease, a copy of which should be in the project files. If not, it may be seen in the District Soils Engineer's office. The Contractor should be furnished with a copy of the lease as soon as they indicate that they will operate under the State's lease.

1. Exclusive Leases

In these pits the Department has exclusive rights to all material covered by the lease until the lease runs out. Contractors may and should be required to use the material to the best advantage of the Department. A scale person or checker must document the quantities taken unless payment is to be made by cross-section measure or by compacted volume in place in which case no material should be removed until original cross-sections have been taken. An inspector may be needed as the situation warrants.

Counties or cities may be permitted to take material from the pit providing they make application for a stated number of tons or cubic yards of material. The request should be made through the district having jurisdiction of the pit. The governmental unit removing the material is then billed for the material removed according to the terms of the agreement with Mn/DOT.

2. Non-Exclusive Leases

When the State has a non-exclusive lease for a material pit, the Contractor has the choice of removing material in accordance with the state's lease or negotiating a separate agreement with the pit owner. If the Contractor elects to remove material in accordance with the State's lease the foregoing instructions apply. If the Contractor elects to negotiate its own lease, the State is not obligated to measure the materials removed; however, to forestall later problems, the Project Engineer should ascertain that the method of measurement has been established. It is also advisable that the Contractor and pit owner agree how much material is to be removed; the area from which it will be removed, and the depth to which it will be removed.

C. PRODUCTION OF AGGREGATE

The special provisions will state when aggregate is to be obtained from designated sources, or if the Department has material available for the Contractor's use in pits where the Department has a non-exclusive lease. The Contractor may obtain material from any other source if in compliance with all regulations pertaining to permits, pollution control, etc.

1. Operation in Designated Pits

Only rarely will the special provisions require that aggregate be obtained from designated sources. When they do, the Contractor must operate in accordance with the terms of the lease or, if the Department owns the pit, according to the Department's instructions.

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2. Operate in Possible Source Pits

Generally, the special provisions or plans may list one or more possible sources of aggregates. The Contractor may operate under the terms of the Department's lease or, if the Department's lease with the landowner is a non-exclusive lease, may negotiate their own lease with the pit owner. If the Contractor elects to operate under the Department's lease, the Project Engineer must see that the terms of the lease are adhered to, paying particular attention to such items as removal of overburden and restoration of the pit. Adequate records of materials removed will have to be kept so that the pit owner receives just compensation. The "Pit Material Withdrawal Report" form is used for this purpose.

For aggregate obtained from pits where the Contractor negotiates leases or owns the pit outright, the Project Engineer shall see that the material meets requirements, that no eyesores are created adjacent to public roads, and that no pollution of air or water is created by the Contractor's operation.

4. PROCEDURE**District**

1. For privately owned sources, district personnel negotiate the appropriate lease with the site owner and sends a copy to the Office of Materials, Grading, Base, & Aggregate Unit (GB&A).
2. District sees that the lease becomes fully executed and ready to use, making any advance payments, if any, and recording.
3. District selects the site to be shown in the construction proposal as a possible source.

Note: Whenever a gravel pit is shown in the bid notice as a possible source of material for a highway project, copies of the material acquisition document together with the pit sheets for that source are made available to prospective bidders for review. The Engineering Special Provisions Unit requests this data from GB&A. The District must supply copies of any pit sheets and pit leases to GB&A before the plans are submitted to the Central Office.

The term "pit sheets" refers to the map and data sheets that are prepared from the information obtained from test drilling the material source site. The map shows the location of the site and each test hole. The data sheet shows a summary of the quantity and quality of the material as indicated by an analysis of the samples.

4. District Project Engineer keeps a record of material removed from pit, and completes a Pit Material Withdrawal Report.
5. District ensures payment to landowner, by the Contractor, for material removed.

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6. Successful bid Contractor elects to use the listed site and removes aggregate from it for the project.

Central Office

7. The Engineering Special provisions Unit, Central Office lists the selected site in the specific project letting notice.
8. Central Office Construction and Contract Administration issues final acceptance of contracts notice to closeout the project.

5. PROCEDURE FOR INITIATING LEASE:**DISTRICTS - MATERIALS OFFICES**

1. Identify new and existing potential aggregate sources for programmed construction project.
2. Determine site ownership and whether owner is willing to lease.
3. If site is untested arrange for test boring, survey mapping.
4. Send pit information to the Cultural Resource Unit for State Historical Office (SHPO) clearance. For further instructions, see Special Provisions (1602) Natural Material Sources; and Special Provisions (1701) Laws to be Observed (Cultural Resources).

OFFICE OF MATERIALS – GRADING, BASE, & AGGREGATE UNIT (GB&A)

5. Assign new source numbers to the lease.

DISTRICTS - LAND MANAGEMENT OFFICES

6. Contact the District Materials Office or GB&A to determine if the lease is a new lease (i.e., a first time lease, as distinguished from a renewal lease). If a renewal lease, use the same source number, which appeared on the previous Lease.
7. Contact GB&A to ascertain whether the source has SHPO clearance.
8. Contact site owner(s) and negotiate an appropriate lease.
 - a. All entries, except signatures, typed. (All handwritten entries, except signatures, initialed by owners; and authorized Mn/DOT personnel.)
 - b. No “boiler plate” changes, deletions or additions.
 - c. Indenture paragraph shows owners name(s), marital status and mailing address. Multiple owners can be referenced to an attached Exhibit A. Avoid “aka” situations by listing owner(s) name as it appears on the acquisition document - usually a deed.
9. Check accuracy of legal description.
 - a. Legal description confined to pit site and does not include land owned by others.

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- b. Lengthy descriptions can be referenced as an attached Exhibit A.
 - c. Note that an abbreviated description such as NW¼ SW¼ is quite acceptable.
10. Check need for special clauses (in addition to the standard clauses which should not be deleted or changed).
 11. Review need for a haul road easement (when owners land will not provide sufficient access).
 12. Check payment to multiple owners (when possible select one owner as payee and complete Form W-9 for that person).
 13. Provide in the lease as to whether the owner is to be paid for reject materials from screening operations. If so, specify amount.
 14. Execute the appropriate lease form, signed by all owners, and notarized in the space provided.

Note: The standard lease form does provide for haul road access to the source across the owner's land. The right to temporarily stockpile extracted material at the pit site is probably implied in the lease. However, the placement of processing plants is not specified in the lease. If this presents a problem, a clause such as the following might be added to the lease: *"The State and its Contractors shall have the right to conduct screening, blending and crushing operations at the pit."*

Many pit owners will insist that a clause be added to the lease setting out their particular requirements, such as: stockpiling topsoil, restoring parts of the pit to certain contours, and covering again with the topsoil. Some may request a reference that the source be excavated in accordance with all applicable laws, regulations and ordinances. The standard lease forms provide a blank space for writing such requirements or making reference to an attached Exhibit.

15. Review lease for errors, omissions, additions, etc., in short, for anything that would affect the lease for acceptance by the authorized District Personnel, approval by the Office of Contract Management for form and execution and for recording by the County Recorder. Resolve any problems with the author of the lease in accordance with Mn/DOT, and other related policies, procedures and legal requirements.
16. Obtain the acceptance signature of the authorized district personnel on the lease. The authorized district personnel's signature must be acknowledged by a Notary Public in the space provided on the back page of the form.
17. After the lease has been signed by the authorized district personnel, send the lease to the Mn/DOT Office of Contract Management, Contracts Administrator (Mail Stop 130) for approval as to Form and Execution. Contract Management will return approved original to the District, keeping a photocopy for their file.
18. Send fully executed lease to the appropriate County Recorder. Lease recording is not mandatory but has been done traditionally for many years primarily to give constructive notice to potential buyers and subsequent owners of the State's interest in the property as well as the right to continue that interest if the ownership should

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change. For this reason it appears prudent to record each lease unless there is a good reason not to.

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19. After the recorded lease has been returned:
 - a. Process County Records invoice for payment
 - b. Send copies of the recorded lease to:
 - i. Pit owner, together with the pit sheets if they are available from GB&A at this time, using landowners lease transmittal letter.
 - ii. Department of Finance, Accounting Services, Quality Control, 400 Centennial Building.
 - iii. GB&A, Mn/DOT Office of Materials (Mail Stop 645).

The original, recorded lease document is kept in the material pit folder in the District files where it becomes part of the permanent record of the aggregate source site and remains available for future reference.

20. Request an Attorney's Certificate of Title. This certificate can be ordered directly from Land Management - Legal and Real Estate Conveyance Unit and should be done early enough so that any pre-payment can be made in a timely way and/or before source is listed in the construction proposal.
21. Review the lease payment requirements, especially if an advance payment is to be made, keeping in mind that:
 - a. If the Field Title Report shows a mortgage on the property, a consent form may be required from the lender before any payments can be made. Contact the landowner on this.
 - b. Assure that each of the owners, including the deed holders, if a Contract for Deed transaction is involved, are either party to the lease or must have completed a waiver of interest. Waivers may also be required from those having a leasehold interest in the property, such as renters,
 - c. If required, assure all judgments and liens against the property must be satisfied prior to any payments.
 - d. If required, all taxes and assessments, ditch liens, etc., must be current.
 - e. The interest of all leases and easement holders must be considered and where necessary either subordinated, disclaimed or made parties to the lease.
 - f. Consider the requirements of any of a variety of state and federal conservation programs that may apply to the property.
22. Prepare and process advance payment, if one is required.
23. At least once each month review records to determine if, during the upcoming two-month period, any of the following will occur:
 - a. A pit lease will expire. Should a new lease be negotiated? This is determined in the District Office.

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- b. A renewal option must be exercised by timely notice or it will be lost. (For example, one of the standard lease forms requires a 30-day advance notice in writing, sent by certified mail to renew.)
- c. An option for a borrow pit lease must be exercised.

6. PROCEDURES FOR MAKING THE PIT AVAILABLE TO THE CONTRACTOR

When a pit is to be listed in the contract letting as a possible source (only rarely will a pit be listed as a “designated” source, i.e., a required source for material). Engineering Special Provisions will by memo ask the District for some basic information about the pit. The request memo will refer to the pit number (the Aggregate Source number), the county in which the pit is located, the state project number, and the letting date.

The District in reply will supply the following information to Engineering Special Provisions:

1. Type of lease; exclusive, non-exclusive or stated owned
2. Lease expiration date
3. Price(s) of material
4. Whether the pit has State Historical Preservation Office (SHPO) clearance.

The price of gravel by the units listed on the lease: The materials pricing box has been designated to accommodate a variety of options. The most commonly used space in the box will be for the price of aggregate per cubic yard, loose volume. (C.Y., L.V.) The remaining three spaces are simply mathematically derived values of the C.Y., L.V. *price based on standard conversion factors:

C.Y., L.V. x 1.2 = E.V. (Excavated Volume) = \$0.50/C.Y., L.V. x 1.2 = \$0.60/C.Y. E.V.)
 C.Y., L.V. x 1.3 = C.V. (Compacted Volume) = \$0.50/C.Y., L.V. x 1.3 = \$0.65/C.Y.
 C.V.)
 C.Y., L.V. ÷ 1.4 = Ton (English Ton) = \$0.50/C.Y., L.V. ÷ 1.4 = \$0.357/Ton)

(Mathematically the value conversion of \$0.50/CY-LV would equal \$0.3571428 per Ton; however, in keeping with the concept of significant numbers, it would be appropriate and desirable to round to the nearest 1/10 of a cent, in this case: \$0.357 per Ton)

* CY-LV is also known as vehicular measure. See Grading and Base Manual, Sec. 5-692.430, rev. June 2002 for a more complete discussion of conversion factors.

Also requested would be the name of the person supplying the information and the date it was provided.

Return the completed request form to Special Provisions and keep a copy of it to start a Contractor File for the successful bidder. During the course of the project letting process, the request form may be augmented by other field-originated information, usually Soils and Design Recommendation Memos as well as bid notices to contractors, which originate in the Central Office.

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When received, each document should be reviewed for aggregate source listings. Many don't have them and can be discarded. Those that do should be checked for accuracy and any discrepancies brought to the attention of the appropriate person.

Successful bidders are announced in the Letting Tabulation prepared a few days after each scheduled bid opening. This notice shows a summary of the successful bid information for the projects listed on the dated bid notice, including the name of the winning Contractor. If the Letting Tabulation should fail to show an expected project check the Tentative Schedule of Lettings, to see if that project has been rescheduled. Bid Letting information is also available at the Office of Technical Support's External web site.

When a successful bidder has been identified for any project where aggregate sources have been listed, prepare the two part "Contractors Intent" memo (Forms R5048-1 & 2) for transmittal to the appropriate Project Engineer together with two copies of the leases, deeds or other acquisition documents for each of the listed sources. The Project Engineer should then get the required information from the Contractor and return it to the district office. If the Contractor has elected to use any of the listed aggregate sources, the Project Engineer should also include the partially completed Pit Material Request (Form TP-02506-02) for each pit to be used. Upon receipt of this form, the District will:

1. Review the request for completeness and accuracy and make any additions and corrections that may be needed. Consult with the Project Engineer when necessary.
2. Assign the next consecutive Withdrawal Order Number to the request. These numbers should contain a district designation, e.g., D1-0001 for District 1. A Withdrawal Order Number log should be used to assist in assigning consecutive numbers. Complete the appropriate sections of the form.

Please note that the Withdrawal Record section of the form should also be completed using the volume and price information given. This section then becomes the official record of the use of the specified material source for that specific project.

Also note that once numbered and approved, the request can be added to or modified, if required, without the need for an additional withdrawal order number.

* Retain the original record in the Project file and return a copy of it to the Project Engineer.

As the project proceeds, the Project Engineer will record the amounts of material removed from the source by the Contractor. At previously agreed upon intervals (monthly, annually, end of project, etc.) the Project Engineer will send a completed Pit Material Withdrawal Report (Mn/DOT Form 2507) to the District for processing for payment to the landowner and/or billing to the Contractor.

Please note that the reporting and payment interval may be specified in the lease. If not, then the interval should be made to allow reasonable and timely payments to the landowner.

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When District Maintenance crews remove material from any site, the Area Maintenance Engineer or Maintenance Supervisor should follow the same procedure required of the Project Engineer so that landowners of leased sources can be paid and withdrawal records kept.

Upon receipt of the withdrawal report, the District will:

1. Review the report to verify that it is complete and accurate.
2. Update the Pit Material Request.
3. Ensure payment for material. (See 7. Payment for Material, below).
4. Send a copy of each withdrawal report to GB&A for depletion record purposes, per request memo dated 4-6-93.

7. PAYMENT FOR MATERIAL

1. The Department will provide the Contractor with statements showing the quantities of material removed and the payment due. Full reimbursement will be required before final Contract payment.
 - a. The Department's Charge for material from a leased source will be direct payment, by the Contractor, to the owner of leased source. The Contractor must provide, to the Engineer, proof of payment to owner of leased source.
 - b. The Department will deduct the Charge for material from a Department owned source from the moneys due on partial and final estimates. Upon conclusion of the Contract, any unused processed or unprocessed material will become the property of the Department.

~~Procedures highlighted in yellow are under review. Payment to pit owner will be by the Contractor. To guarantee payment to pit owner, Mn/DOT may withhold moneys due on partial and final estimates.~~

~~Payment to the pit owner is an obligation incurred by Mn/DOT under the lease, independent of Mn/DOT being reimbursed by the Contractor.~~

~~**Note:** The District must initiate payment to the landowner and billing to the Contractor. Separate submittals (paying and billing) are necessary. (Accounts Payable does not notify Accounts Receivable when they have made payment to a landowner and that billing to a Contractor should occur.)~~

- ~~1. The reviewed Pit Material Withdrawal Report (Mn/DOT form 2507) becomes an invoice billing the State of Minnesota by completing the Invoice and Approval sections of the document and by providing additional information on the Pit Material Invoice (form R49837): name(s) of payee(s), mailing address for payment, vendor number and such payment accounting information as charge identifier and work item number.~~

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- ~~2. Send the completed and approved original Withdrawal Report and the Pit Material Invoice to Mn/DOT Financial Operations Section, JoAnn Markel (Mail Stop 210, phone 651-296-3284) for completion of the payment process.~~
- ~~3. Bill Contractor for material removed from leased pits by using procedure outlined below in 8.1, LEASED PITS.~~
- ~~4. Send copies of the updated Pit Material Request and the Pit Material Invoice to the Project Engineer for record-keeping.~~

~~Please note that advance payments required by the terms of the lease before material may be removed and the payment of incidental expenses, such as title opinion fees and document recording fees, are also made following the procedure just described except that other types of invoices will be used by the District to effect those payments.~~

- ~~1. Advance payments, title opinion fees and other similar payments should be made on invoice form R38862G.~~
- ~~2. Recording fee payments should be made using the recorders invoice, which is augmented with same information used to convert the withdrawal report into a payment document.~~

~~8. PROCEDURES FOR BILLING THE CONTRACTOR (for Mn/DOT owned sources)~~

~~Procedures highlighted in yellow are under review. For material removed from a Mn/DOT owned pit, Mn/DOT's charge for material shall be deducted from moneys due on partial and final estimates (pursuant to Standard Specification for Construction, 1602, Natural Material Sources). Mn/DOT will not bill Contractor for material removed from a Leased pit; payment to pit owner will be by the Contractor.~~

~~1. LEASED PITS~~

~~The Contractor is billed for the material removed using an Invoice Request (form R32876) that is completed using information from the Material Withdrawal Report, the appropriate S.P. file, plus sales tax.~~

~~The completed Invoice Request and copy of Withdrawal Report are sent to Mn/DOT Financial Operations, Bonnie Peetsch, (Mail Stop 215, phone 651-297-2212) for billing with copies to the Project Engineer for record-keeping. Since Finance does not issue payment notices you will not hear further from them. They do however go after their delinquent payment accounts when necessary, which makes closure of Contractor's file easier.~~

~~2. Mn/DOT OWNED PITS~~

- ~~a. The Department's charge for material may be deducted from moneys due on partial and final estimates. (See Standard Specifications for Construction, Section 1602, Natural Material Sources.) **or ...**~~
- ~~b. Follow procedures above in 8.1 LEASED PITS~~

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About once a month the Office of Construction and Contract Maintenance prepares a Final Acceptance of Contracts notice. This notice shows a listing of the S.P. contracts that are being closed in that report period. This listing should be reviewed for any project where material sources were involved. Any that were should be checked to see that all material removed, if any, has been paid for and/or billed to the Contractor. Any discrepancies should be resolved as soon as possible and the appropriate records updated then the file can then be closed and the contents recycled.

8. RELINQUISHMENT OF A GRAVEL PIT

Occasionally Mn/DOT has been asked by a pit owner to relinquish all or part of the state's lease interest in a pit. Such requests should be referred initially to the District R/W Office. Such relinquishment should not be granted if there is a reasonable chance of prejudice to Mn/DOT's need of the pit for maintenance or a construction project. District R/W and District Materials should submit written concurrence. The authorized district personnel must approve such relinquishment. Form R4863 (Relinquishment of Material Pit Lease) may be used for full relinquishment of a pit lease.

A related problem is correcting an error in a lease. For example, if an error was made in the legal description of the pit so that more land is described than actually owned by the party signing the lease, a corrective lease should be executed by both parties and recorded. The caption of the new lease might read: "Corrective Non-Exclusive Material Pit Lease". The lease might contain a correcting paragraph explanation such as the following:

This document is given to correct the description that appears in that lease dated_____, executed by the above named parties and recorded on_____in the office of the County Recorder in and for_____County, Minnesota, as Document No._____ .

9. MISCELLANEOUS TOPICS AND LEASE FORMS

The following topics and lease forms are related to gravel pit operations. They are grouped here rather than scattered throughout the PROCEDURE steps of the preceding section so as not to obscure the explanations of procedure. However, since the process involves the acquisition of rights associated with real estate ownership it is quite probable that any one or more of many other supporting documents may also be required to assure the validity of any one lease both for recording and for payment purposes.

A. Mn/DOT-Owned Pits

Sometimes it may be more advantageous for the state to purchase land containing aggregate material than to try to lease. When leases are difficult to get, or too costly, or material is needed by maintenance operations over a long period, the District Engineer may initiate a request for purchase. The authority for purchase of land for a gravel pit (or a borrow pit) is contained in Minn. Stat. §160.11 and Minn. Stat. § 161.20 cited earlier. The purchase procedures follow the same path as that for a Right of Way acquisition. The Direct Purchase supervisor may arrange for payment for the land out of encumbered gravel pit funds, provided sufficient funds remain for gravel purchases.

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Federal requirements pertaining to gravel pits are contained in 23 CFR Section 635.407(e). They state that Federal funds can participate in 1) the cost of material or 2) the fair and reasonable value of the material, whichever is less. If pits are used for several jobs, the accounting that would be required could become cumbersome. Therefore, FHWA has suggested that Federal funds should not be used in the acquisition of material sites. Instead, Federal participation would apply to the unit costs of material on a project-by-project basis.

Copies of deeds for Mn/DOT-owned gravel pits are kept in the District. Most of these pits are considered to be intermittently active, and many are used on a continuing basis for supplying sand and gravel to highway maintenance crews. They are also listed when needed as possible sources in highway contract lettings. The total acquisition files are kept at the Record Center.

The price for material from Mn/DOT-owned sources will be determined by the District and should be at least equal to prices being charged by privately owned pits, if any, in the vicinity unless there is good reason to have a lower price.

Mn/DOT-owned material can be likened to “money in the bank”, to be used when private sources are no longer available for one reason or another. For this reason, it is perhaps prudent to use private sources as much as possible reserving Mn/DOT material for the future.

B. Other Sources

Other agencies, both public and private, such as the U.S. Forest Service, Minnesota DNR, the various counties and townships throughout the state as well as forest industries, railroad companies and others also own material source sites that are used by Mn/DOT.

When these sources are used, the District will negotiate the agreement, usually in the form of a permit, with the agency that will then, almost always, write the agreement on their own form.

Unless Mn/DOT's AGO representative has prepared these agreements for review, and they need not be, they will not be sent there for approval. The same is true for recording.

Normally, there will be no problems especially with Forest Service and DNR agreements. With others, however, it would be prudent to carefully review all conditions of the agreement before getting the authorized district personnel's signature.

Occasionally the District will identify a source owned by another agency and leave it to the successful construction bidder to actually complete the agreement. In those instances Mn/DOT will often request a letter of intent from the agency prior to the bid announcement, which stipulates the conditions of the permit, such as the price, quantity and location of the material. These conditions then appear in the bid notice so that all contractors are equally informed.

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Since the ground rules involved with this procedure can be quite variable, depending on the circumstances, and therefore difficult, if not impossible to fully describe here, it is enough to say that the system works and has provided another way for Mn/DOT to do business.

C. "SHPO" Clearance"

At some point prior to making the pit available to the Contractor, usually during the District planning phase after the aggregate sources have been identified, clearance to use those sites must be received from the State Historic Preservation Office (SHPO).

Most state owned sources already have SHPO clearance. Clearance on leased sources must be obtained through the C.O. Office of Technical Support, Cultural Resource Unit at the time that the source is identified for use on the S.P.

If the Contractor elects to use a source other than what is listed in the proposal, SHPO clearance on that site then becomes his responsibility and he must provide the clearance document to the Project Engineer before material from that source can be accepted.

For further instructions, see Special Provisions (1602) Natural Material Sources; and Special Provisions (1701) Laws to be Observed (Cultural Resources).

D. Local Regulations and Material Site Reclamation:

The need for local regulation of material source sites is well presented in the DNR publication, "A Handbook for Reclaiming Sand and Gravel Pits in Minnesota", July 1992 by Cynthia G. Buttleman. As the title indicates, the handbook also serves as an excellent reference for reclaiming those sites.

Considering the rewards that landowners gain through a progressively reclaimed removal operation, it appears reasonable to expect that at least some of that planning will be reflected in the conditions of the lease that they execute. If the use and reclamation of the site is governed by a local ordinance, it should be referenced in the lease and a copy made available to district office.

As the handbook notes: "In Minnesota, sand and gravel mining is increasingly viewed as a temporary use to be followed by another land use that is more compatible with the surrounding landscape."

E. Borrow Material Source Agreements:

The term "borrow material source" or "borrow pit" commonly refers to a site, usually a farm field, which contains the required quantity of low-cost material suitable for embankments or fill. Occasionally the site is located immediately adjacent to the highway project and can be purchased as right of way land. Usually, however, the site is located within a short haul distance and must be leased.

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The borrow site is not necessarily a pit as such. It is often the top of a field hill that is cut down to blend with the adjacent topography or it can be a shallow skimming of the land over a large area after the topsoil has been removed.

Because borrow pits are normally used for a single specific project they are not assigned an ASIS number but are identified with the appropriate S.P. number followed by a number or letter making the designation unique to that particular job.

Since the availability of suitable sites might be quite limited, the exclusive lease form may be preferred over the non-exclusive form, thus avoiding the possibility of having to share the borrow source with others. Two versions of the standard exclusive lease form are available.

1. R7603: which allows for payment by the amount of material removed at negotiated prices but with no pre-payment.
2. R8613: which calls for a negotiated pre-payment cost, which covers all of the material, removed regardless of amount.

Normally a volume or tonnage limit is not specified in the lease but occasionally the landowner may require it, perhaps as a check to limit the extent of the mining, especially for a lump sum lease.

Regardless of the form used, the borrow pit lease is usually first secured by an Option to Lease (R7752) rather than entering directly into the lease itself. The appropriate lease form is then attached to the option as the EXHIBIT A.

The cost of the option, usually negotiated at a few hundred dollars, is minor compared to the prepayment cost of the exclusive lease. If, for whatever reason, the construction project is delayed for a year or so the option can be allowed to expire with no great loss. The loss of an expired lease, however, with a large pre-payment, could be quite expensive.

The processing sequence for borrow pit options is similar to other material pit leases with some differences:

1. District negotiates Option to Lease and the conditions of the borrow pit lease with the landowner.
2. The District will process the option for acceptance and payment and, if required, request the attorney's certificate of title.
3. The District will exercise the option by giving the owner written notice in accordance with the terms of the agreement which will normally include the execution of the EXHIBIT A lease by the owner.
4. Upon receipt of the executed EXHIBIT A agreement, the District will process it for acceptance and recording, if required - sometimes the landowner will ask that the content of the lease, especially the payment information, not be made public - and, if required make the advance payment to the owner.

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Occasionally borrow pit leases are written on the standard non-exclusive lease form (R4075) for one purpose or another. These leases can be simply captioned: Borrow Pit Lease. Payment would be based on the appropriate unit of measure as the material is removed.

F. Other Material Source Agreements:

Construction aggregate may be available in the market in a variety of forms, most of which have been covered in this narrative. For those that have not been covered - the acquisition of stockpiled material, for example - creative lease writing can be another option, provided that the basic rules that govern the process are followed.

G. Pit Sheets:

Whenever a gravel pit is shown in the bid notice as a possible source of material for a highway project, copies of the material acquisition document together with the pit sheets for that source are made available to prospective bidders for review. The Engineering Special Provisions Unit requests this data from the Grading, Base, & Aggregate Unit (GB&A). The District must supply copies of any pit sheets and pit leases to GB&A before the plans are submitted to the Central Office.

The term "pit sheets" refers to the map and data sheets that are prepared from the information obtained from test drilling the material source site. The map shows the location of the site and each test hole. The data sheet shows a summary of the quantity and quality of the material as indicated by an analysis of the samples.

H. Lease Expiration Dates and Lease Option Dates:

The Districts should keep a reminder file in which each lease is listed by the month in which it will expire. Also include any leases having a renewal option clause that must be exercised by giving written notice by a date within the month. This reminder file should be reviewed regularly, approximately six to eight weeks before the expiration date or option renewal date. Leave enough time to notify District Materials Engineer, to receive back District Materials Engineer's reply, and to prepare a notice to owner.

An option to renew is the pit owner's agreement to prolong the term of the lease. As such the offer must be accepted in precisely the terms in which it was given. The following wording is an example:

The State of Minnesota, Department of Transportation, elects to exercise the option for renewal of the lease covering the above referenced pit for a period of [two] years (through 9/7/2005) in accordance with the Material Pit Lease signed by you on 9/8/2003.

Send copies of the letter to District R/W Engineer (Land Manager), District Materials Engineer and Grading, Base, & Aggregate Unit. Also, consider requesting a continuation of the Attorney's Certificate of Title.

I. The Lease Period:

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If the gravel pit is going to be listed as a possible source for a highway contract letting, District R/W must negotiate a lease period long enough to accommodate the total time needed: the elapsed time until the letting plus the period that the pit will be used during the highway project. If two years is not long enough, then use the renewal option portion of the standard lease form. A longer base term is preferred over using a renewal option clause; the state's Contractor would then not have to rely on the state giving timely notice to the pit owner to affect the renewal of the lease.

J. DNR Gravel Pits:

The Minnesota Department of Natural Resources administers (approx.) 166 sand and gravel leases in 19 counties (information taken from DNR Gravel Pit Reclamation Handbook). Some of the DNR pits are leased to Mn/DOT. District R/W contacting the local DNR field representative initiates these leases. The lease will be prepared by Central DNR and will appear on the standard DNR gravel pit lease form. Mn/DOT will be listed as the tenant or user of the pit. Central DNR will send the lease to the Districts for execution by Mn/DOT.

K. ASIS - Aggregate Source Information System:

ASIS was developed by Mn/DOT in 1985 as a computerized way to store and retrieve a variety of aggregate source information including data from about 450 state owned pits and 6550 state leased pits.

The Grading, Base, & Aggregate Unit (GB&A) of the Office Materials maintains the database, which is available on the GB&A website.

GB&A will assign new aggregate source numbers. Newly leased or purchased aggregate sources will be assigned numbers when requested by the Districts

The aggregate source number is a 5-digit number of which the first two identify the county where the site is located with the remaining three acting to provide sequential identity that is unique to that particular location within the county.

Example: Non-exclusive Material Pit Lease No. 64200 would be the 200th source in Redwood County on land specifically described in the lease. The number would be unique to the land described and would not be duplicated within the ASIS database.

All aggregate sources: state owned and leased pits, commercial pits, pits located in several adjoining States and Provinces of Canada are assigned aggregate source numbers so that they can be identified in ASIS.

Exception to the system: Borrow pits are not assigned aggregate source numbers under the ASIS system. Since borrow pits are acquired for specific projects, the numbering of borrow pits will include the S.P. number for reference, followed by a number or letter designation unique to the particular job.

Additional information regarding the relationship between ASIS, material pit leasing and aggregate sources can be found in Section 4-2.02.06 AGGREGATE SOURCES

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of the Geotechnical and Pavement Manual dated April 1, 1994 which is interesting to read, but much too lengthy to be added here.

L. Lease Forms:

1. Non-exclusive Material Pit Lease
2. Option to Lease
3. Exclusive Material Pit Lease (Exhibit A) Cubic Yard Payment
4. Exclusive Material Pit Lease (Exhibit A) Lump Sum Payment

Non-Exclusive Material Pit Lease

As noted, the non-exclusive nature of this lease allows the landowner and Contractor, for whatever reason, to negotiate a separate agreement providing a degree of flexibility that apparently appeals to many owners. The standard leasing period is two years. If a longer time period is desirable it may be possible to negotiate additional two-year "option" periods with the landowner. New leases as distinguished from renewal leases must be assigned an aggregate source number so that the source can be added to the Aggregate Source Information System (ASIS) database; the Grading, Base, & Aggregate Unit assigns these numbers. Standard leasing period is two years.

**Option to Lease & Exclusive Material Pit Leases
(Cubic Yard & Lump Sum Payment)**

The Option to Lease forms together with the two Exclusive Material Pit Lease forms, Exhibits "A", are most often used to acquire borrow pit sites for specific work projects. Contractors, or where the prospective site may be too small to accommodate more than one Contractor at a time also uses them to assure material in situations where only few suitable aggregate sites can be found, and those subject to control.

In these instances, if the Contractor elects to use the optioned site, the appropriate lease form is then executed; if not, the option is simply allowed to expire. For this reason, the landowner will almost always require an advance payment, the amount determined by negotiations, as compensation for holding the site for the option period.

Sometimes the "borrow" and aggregate sites will be designated in the project plan as the only acceptable source for the project and must be used by the Contractor. Then the appropriate lease can be negotiated directly with the landowner without the option agreement.

5. Relinquishment of Material Pit Lease, R4863: used when it is desirable, for one reason or another, to release either party from a lease agreement prior to its expiration date. Please note that relinquishment requests are referred to the District and are approved by the authorized district personnel sending notification to the Aggregate Unit.

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6. Corrective Lease, Mn/DOT form 25681, a variant of a standard lease form used to correct an error in an existing lease, usually a legal description. This form was rarely used in the past and now requires revision to recording standard format.
7. Affidavit of Scrivener's Error, R17293.KBW (Rev. 2-97): a simple and direct way of correcting errors in an existing lease. Requires:
 - i. "execution by the same person that wrote the original lease."
 - ii. a contact with the County Recorder to verify acceptance of the affidavit as a corrective instrument.
8. Waiver of Interest, R4981.KB (Rev. 12-93): used to document a disclaimer of interest in the lease by any person or entity, other than those signing the lease, as "owners", who may have an interest in the land.
9. Waste Pit Permit, R4065.KBW (Rev. 2-97): used when it is necessary to have a site for dumping or spreading excess earth material from the roadwork on a specific construction project.
10. Haul Road Easement, Mn/DOT 25035: used when it becomes necessary to acquire pit access additional to that granted in the lease. Rarely used; the form now requires revision to recording standards.
11. Consent of Mortgage, no form number: used when it becomes necessary to subordinate the lease to the mortgage.
12. Form W-9, IRS Form: used to document owners social security or Tax ID number, which is needed to get a Mn/DOT vendor number prior to payment for materials removed.
13. Attorney's Certificate of Title, Mn/DOT 2508 (12-76): states the condition of the title, based on an interpretation of instruments recorded in various county offices, of the ownership of a specific parcel of real estate and of the encumbrances to which it is subject.
14. Field Title Report, Mn/DOT 25085 (9-92): is a supplement to the Certificate of Title that fully identifies all parties of interest, the basis for their interests, the occupancy of the property and any physical factors that may affect its acquisition.

Direct any comments or questions about this Material Pit Lease Procedures document to:

Mn/DOT
Office of Materials
Grading, Base, & Aggregate Unit
Randy Tilseth, 651-366-5451