

#18.2

**MEMORANDUM** State of Alaska  
DEPARTMENT OF NATURAL RESOURCES-DIVISION OF LAND AND WATER MANAGEMENT  
NORTHERN REGIONAL OFFICE - 3700 AIRPORT WAY, FAIRBANKS, ALASKA 99709

TO: Randy Horner  
Project Agent

DATE: January 5, 1990

TELEPHONE NO: 451-2700

FROM: Frederick L. Smith *FLS*  
Acting Regional Manager

SUBJECT: Consistency Review -  
Nome - Council Road

This is to notify you that this office has requested that the review clock for the above referenced consistency review be stopped for the following reasons:

1. Only the Department of Natural Resources (DNR) has the statutory authority to do navigability determinations on behalf of the State of Alaska. DNR has determined that the Solomon River is a navigable waterway and, therefore, a right-of-way permit is required for all uses below the ordinary high water line. A right-of-way application from DOT&PF is necessary.
2. It is estimated that 469,595 cubic yards of gravel and rip rap will be required for this project. We need more specific information as to the source(s) of this material to determine if any of these sources are state-owned. If the source(s) are state-owned, then applications for material use will be required from DOT&PF.

Specific information on the scope of the project in relation to the material use and right-of-way is necessary for us to review this project and its effects on the Alaska Coastal Management Program.

Once the above requests have been received, we will request that the Division of Governmental Coordination again start the review clock.

cc: Ron Swanson  
Patti Wightman

*John*  
*Does Design have a copy of this?*

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Northern Region DOT & PF

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wards, easements must be created for access to the control station from the nearest practical property boundary. There must be an easement with a radius of five feet around the control station, a pedestrian access easement five feet wide from the nearest practical property boundary to the control station, and, where applicable, a five-foot-wide direct line-of-sight easement from the control station to other control stations.

(5) Other easements, as necessary, will be determined at the time of survey.

(6) Rights-of-way for arterials must be a minimum of 100 feet wide; rights-of-way for residential roads must be a minimum of 60 feet wide; and other right-of-way widths, as necessary, will be determined at the time of survey. (Eff. 3/27/80, Register 73)

Authority: AS 19.10.010                    AS 38.04.900  
          AS 38.04.045                    AS 38.05.020  
          AS 38.04.050                    AS 38.05.127  
          AS 38.04.055

**11 AAC 53.310. DETERMINATION OF NAVIGABLE AND PUBLIC WATER:** (a) As part of the preliminary written decision required under AS 38.05.035(a)(14) before the sale, lease, grant, or other disposal of any interest in state land, the director shall determine whether water adjacent to or contained within the land intended for disposal is navigable water, public water, or neither.

(b) In making this determination, the director shall solicit comment from the Department of Fish and Game and the division of parks, and, if appropriate, from other state and municipal agencies. In addition, the director may use

- (1) a record of historical use, as documented in a book, newspaper, diary, or other published or unpublished source;
- (2) published or unpublished records of a public administrative agency;
- (3) written or oral information from any other source.

(Eff. 12/29/77, Register 64)

Authority: AS 38.04.005                    AS 38.05.020  
          AS 38.04.050                    AS 38.05.035  
          AS 38.04.055                    AS 38.05.127  
          AS 38.04.900

**11 AAC 53.320. WRITTEN DECISION CONCERNING EASEMENTS.** If the water is determined to be navigable or public water, the director shall, in the preliminary written decision referred to in sec. 310 of this chapter, either

- (1) list the easements or rights-of-way that are to be reserved for public access to or along the water under sec. 330 of this chapter; or

**Sec. 38.05.965. Definitions.** In this chapter, unless the context otherwise requires,

(1) "acquired land" means land belonging to the state including tide, submerged and shoreland which has been obtained by escheat, purchase, or any means other than by general land grant;

(2) "agricultural land" means land chiefly valuable for agricultural purposes;

(3) "commissioner" means the commissioner of natural resources;

(4) "department" means the Department of Natural Resources;

(5) "director" means the director of the division of lands of the Department of Natural Resources;

(6) "geothermal resources" means the natural heat of the earth at temperatures greater than 120 degrees Celsius, measured at the point where the highest-temperature resources encountered enter or contact a well or other resource extraction device, and includes

(A) the energy, including pressure, in whatever form present in, resulting from, created by, or that may be extracted from that natural heat;

(B) the material medium, including the geothermal fluid naturally present, as well as substances artificially introduced to serve as a heat transfer medium; and

(C) all dissolved or entrained minerals and gases that may be obtained from the material medium, but excluding hydrocarbon substances and helium;

(7) "grazing land" means land chiefly valuable for grazing purposes;

(8) "industrial and commercial land" means land chiefly valuable for industrial trade, manufacturing or business use;

(9) "lieu and indemnity land" means land which the state is entitled to select under the provisions of 38 Stat. 1214, as amended (48 USC 353) or a similar statute to compensate for land in place of surveyed rectangulars, which have been lost to the state by reason of deficient sections, prior rights, claims, withdrawals, reservations and other appropriations;

(10) "mineral land" means land prospectively valuable for mineral deposits;

(11) "multiple use" has the meaning given in AS 38.04.910;

(12) "navigable water" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal, sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes;

(13) "park and recreation land" means land chiefly valuable for public park and recreation use;

(14) "preference right forest lease" means a lease granted to a lessee whose United States Forest Service term special use permit was cancelled to allow the land under permit to be selected by the state;

(15) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(16) "public water" means navigable water and all other water, whether inland or coastal, fresh or salt, that is reasonably suitable for public use and utility, habitat for fish and wildlife in which there is a public interest, or migration and spawning of fish in which there is a public interest;

(17) "rule of approximation" is the rule which is applied in determining whether or not a lease complies with the area limits set forth in this chapter and regulations adopted under it and in keeping the boundaries of leased land coincidental with legal subdivisions; under the rule, if the area covered by a lease in excess of the permitted maximum is smaller than the area of any deficiency that would result by eliminating from the lease the smallest legal subdivision covered by the lease or application for lease, the excess area will be permitted to remain in the lease; if the excess area is greater than the deficient area would be, then the smallest legal subdivision will be eliminated from the lease;

(18) "shoreland" means land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to ordinary high water mark as modified by accretion, erosion, or reliction;

(19) "state land" or "land" means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state;

(20) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state;

(21) "tideland" means land that is periodically covered by tidal water between the elevation of mean high water and mean low water;

(22) "timber land" and "material land" mean state land chiefly valuable for materials, including, but not limited to, sand, stone, gravel, pumice, common clay, or timber and other forest products;

(23) "university land"

(A) means

(i) all sections 33 reserved to the university under 38 Stat. 1214, as amended;

(ii) all land granted to or reserved for the benefit of the university that retains its designation as university land;