

MEMORANDUM State of Alaska

TO: Harold Cameron, Dist. R/W Agent
Department of Transportation
2301 Peger Road
Fairbanks, AK 99701

DATE: September 6, 1977

FILE NO:

TELEPHONE NO:

FROM: Jack McGee, AAG
Transportation Section
Fairbanks, AK 99701

SUBJECT: Use of Resources
From State Lands

SEP 8 3 36 PM 1977

INTERIOR DIVISION
DEPARTMENT
OF HIGHWAYS

The inquiry you recently made to this office raises the following question:

What is the D.O.T. Division of Highways' legal status concerning the use of resources such as sand and gravel from State lands?

A.S. 19.05.080 gives Highways the statutory right to use materials from State lands. This right, however, is not absolute because of the authority granted to the Division of Lands under the Alaska Land Act. A.S. 38.05.035(a)(2) of the Alaska Land Act gives the director of the Division of Lands the duty and power to "manage, inspect and control State lands." Subsection (a)(4) of the same statute gives the director the power to "prescribe application procedures and practices for the sale, lease, or other disposition of available lands, resources, property or interest in them."

Given that the director of the Division of Lands has the statutory duty to manage and control resources located on State lands, the next step is to examine the administrative framework by which this duty is carried out. 11 AAC 52.010 requires the Division of Lands establish a system of land classification for State lands. 11 AAC 52.210 mandates that this classification be made according to a land use plan. Once such a plan is formulated, land can be classified pursuant to 11 AAC 52.030 into one or more of the following categories:

✓	Dist. R/W Agent	✓
	Title	
✓	Engineering	15
	Negotiations	
	Relocation	
	Appraisals	
	Appr. File	

1. agricultural lands
2. commercial lands
3. grazing lands
4. industrial lands
5. material lands
6. private recreation lands
7. reserved use land
8. residential land
9. timber lands
10. utility lands
11. watershed lands
12. resource management lands
13. open-to-entry lands

MEMO
Harold Cameron,
District R/W Agent
from
Jack McGee, AAG
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Requests by Highways for the use of sand, gravel or stone from classified State land pose no particular problem. 11 AAC 52.030 allows materials to be taken from any classified State land, regardless of how the land is classified. In making such a request, Highways, of course, must follow the procedures set out by the Division of Lands regarding such use. As mentioned above, AS 38.05.035(a)(4) gives the Division of Lands the statutory authority to prescribe procedures for the "disposition...of resources."

It is only when the request is for materials to be taken from unclassified State lands that administrative difficulties may occur. This is so because 11 AAC 52.020 prohibits the removal of resources from unclassified land. Thus, if a material request were made involving unclassified land, a land use plan pursuant to 11 AAC 52.210 would be required so that the land could first be classified. Once classified, the Division of Lands could then act on the request.

In summary, it appears that administrative problems may occur only when the request is for material from unclassified land. Under present regulations and procedures, such a request would involve the submission of a land use plan by Highways. Should Highways object to the preparation of such a plan as too burdensome, the correct procedure would be to request the Division of Lands to adopt a regulation allowing material to be removed from unclassified land when the request for the material is from a State agency or department.¹

¹ 11 AAC 52.020 does allow for the disposal of minerals from unclassified lands. The term "minerals," however, does not include sand, gravel or stone. The latter are defined by 11 AAC 52.220.(15) as "material."

JM/ps