

Wednesday, December 16, 2020 Seward CAB meeting
Notes by Carol Griswold c_griz@yahoo.com

Guest David Charron, Statewide Program Manager for mining claims,
David.charron@alaska.gov

South Fork Tonsina Creek Luck/Woodside mining claim

David noted the Board had misconceptions about the current situation. For context, he is the statewide program manager for surface uses mining claims. He enforces mining reclamation laws on private, state, and federal land. As an authorized officer, he signs all permits for all but hard rock mines except for big corporate mining like Red Dog Mine. He also handles mining-related trespass on state land.

He said no permit was issued to Luck or Woodside as no plan or bond is required for recreational mining. There are a range of activities allowed without a permit under the 11 AAC96.020 Generally Allowed Uses (GAU) of state-owned public domain land including suction dredging with a nozzle intake 6" in diameter or less and 18 HP or less engine, and mining by hand.

Issues with occupancy, camps, storage of equipment, solid waste, litter, equipment, and trash that are out of compliance with GAU fall under the legal framework of the Division of Mining Land and Water (DMLW). However, the violations are not an offense under state law and there are no fines.

Trespass and non-compliance are handled with a notice of compliance. DMLW has sent out correspondence to Luck and Woodside regarding litter and improper storage of equipment with a request to contact the department. In 2019, DMLW sent a letter to Luck and Woodside regarding the lack of a permit from ADFG to cross the anadromous stream, and concerns about solid waste and litter. No permit is needed to cross land from the adjacent state park.

If necessary DMLW can issue criminal or civil trespass notice to quit through the Attorney General's office. The District Attorney (DA) is not keen to take up criminal cases as resources, time, and accessibility to DA are limited.

A civil trespass issue would go through the court of law. Civil litigation would require that more information is sent to claim owners according to GAU and if no improvements are made, a dialog could be opened with the DA regarding pursuing a civil case depending on available resources, and evidence.

DMLW enforces mine reclamation laws as these do not fall under state laws.

David is committed to addressing the issues and will keep CAB and State Parks advised if he issues orders to quit or serves a trespass notice. He tried to hike up to mining site in the fall of 2016 but the stream was too high. He returned in the fall of 2019 (observations not noted). He appreciates CAB efforts and for sticking with it. Photos and other documentation are appreciated.

Mark Luttrell asked if a permit was needed to cross an ILMA (Interagency Land Management Agreements) David replied that motorized activities through a state park requires a permit. Pam Russell at the Kenai Area Office is the contact for that. Mark followed up with a question of whether State Parks could issue a citation. Jack Ransom replied that without a permit in place, he is not sure how to proceed on an ILMA permit. There is a \$100 citation for unauthorized activity, and a \$50 fee for a permit to cross Tonsina State Park ILMA to get to general use area.

David stated Brian Blossom of ADFG Habitat is aware of the suction dredging and activity. Wildlife Troopers are responsible for habitat enforcement.

David said this general state land is designated for recreational uses in the Kenai Area Plan and the recreational values needs to be considered when issuing permits to ensure reasonable concurrent uses. He noted the Alaska State Constitution ensures durable property rights of miners, and does not restrict public access; the area is open to claim staking.

An ILMA is restricted to a maximum of 640 acres. An ILMA would not prevent or change real property interest to minerals on state land. Even if the legislature passes a bill to add area to CHSRA through an ILMA, it would not affect existing valid mining claims, the right to access preexisting mining claims, and durable property rights.

State legislative action is required to remove more than 640 acres from general use or to issue a mineral closing order.

State mining claims fall under ANILCA (Alaska National Interest Lands Conservation Act). All state land is open to mining, **unless closed by legislative action.**

Cliff Reid noted the Luck/Woodside claim number is 729020. Luck/Woodside restaked the former Goreson 40-acre claim. The claim lacks required permits: a land use permit from DMLW, and an anadromous stream crossing permit from ADFG. According to GAU, they should lose their claim if they do not keep up with recording, staking, maintenance, etc and do not move camp every 14 days.

David noted that the trespass issue does not divorce miners from property rights. He restated that the miners have real property rights that are durable, perpetual rights as long as they pay rental fees, perform labor on claim annually, and record affidavits.

Currently that area is multi-purpose state land with the intent to allow mineral entry. But habitat recreational values must be considered concurrently.

The miners must comply with state law regarding fish habitat. ADFG office should work administratively first, and then consider filing a lawsuit.

David acknowledged the amount of cleanup work done on the previous and current mining claims.

He has opened up a formal trespass case and is pursuing it. He is open to receiving any further information, photos, and updates that will help move this case forward such as improper equipment storage, more than 14 days camped at one place, litter, solid waste. Cliff noted he has photos showing camp in same place in 2019 and 2020.

Nick noted there are three other former Goreson claims in that area that show up as closed on the state mining claims site. Two are above Cathedral Fall, one is below. David said these claims are abandoned as no affidavits have been filed, no rent paid, no mining done, and not maintained. They are, however, still open to new claims being staked.

At this point, the meeting ran out of time. David encouraged the Board to contact him at David.charron@alaska.gov if the Board had any further question or wished to share photos and documentation. The Board thanked him for his time and valuable information.

Carol note:

Below are some useful links I found for more detailed information; my emphasis is noted in **bold**:

11 AAC96.020

<http://www.touchngo.com/lglcntr/akstats/aac/title11/chapter096/section020.htm>

(1) (E) using a recreational-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on or **off an established road easement if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;**

(2) access improvements, as follows:

(A) brushing or cutting a trail less than five feet wide using only hand-held tools such as a chainsaw; **making a trail does not create a property right or interest in the trail;**

(B) anchoring a mooring buoy in a lake, river, or marine waters, or placing a float, dock, boat haulout, floating breakwater, or boathouse in a lake, river, or marine waters, **for the personal, noncommercial use of the upland owner, if the use does not interfere with public access or another public use,** and if the improvement is placed within the projected sidelines of the contiguous upland owners parcel or otherwise has the consent of the affected upland owner; in this subparagraph,

(3) removing or using state resources, as follows:

(B) harvesting wild plants, mushrooms, berries, and other plant material for personal, noncommercial use; **however, the cutting of trees is not a generally allowed use under this subparagraph;**

(F) hard-rock mineral prospecting or mining using light portable field equipment, including a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger;

(G) suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day;

(4) other improvements and structures on state land, as follows:

(A) setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose, including as a support camp during mineral exploration, **for no more**

than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests;

(5) uses not listed in (1) - (4) of this subsection that

(C) do not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;

(D) do not interfere with public access or other public uses or interests; and

(E) do not continue for more than 14 consecutive days at any site; moving the use to another site at least two miles away starts a new 14-day period.

(b) The list of generally allowed uses in (a) of this section does not

(1) apply to land withdrawn from the public domain and no longer managed under [AS 38](#), **including a state park** and land owned by the University of Alaska;

(2) exempt a user from complying with other applicable federal, state, or municipal statutes, ordinances, and regulations; or

(3) authorize a use if another person has already acquired an exclusive property right to undertake that use.

(c) In order to operate under a generally allowed use listed in this section, the user must comply with the conditions set out in 11 AAC [96.025](#).

(d) If the department determines that, under the circumstances of a particular case, an otherwise generally allowed use interferes with public access or other public uses or interests, the use must cease.

11 AAC 96.025. Conditions for generally allowed uses

<http://www.touchngo.com/lglcntr/akstats/aac/title11/chapter096/section025.htm>

A generally allowed use listed in 11 AAC [96.020](#) is subject to the following conditions:

(1) activities employing wheeled or tracked vehicles **must be conducted in a manner that minimizes surface damage;**

(2) vehicles must use existing roads and trails whenever possible;

(3) activities must be conducted in a manner that minimizes

(A) disturbance of vegetation, soil stability, or drainage systems;

(B) changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and

(C) disturbance of fish and wildlife resources;

(4) cuts, fills, and other activities causing a disturbance listed in (3)(A) - (C) of this section must be repaired immediately, and corrective action must be undertaken as may be required by the department;

(5) trails and campsites must be kept clean; garbage and foreign debris must be removed; combustibles may be burned on site unless the department has closed the area to fires during the fire season;

(6) survey monuments, witness corners, reference monuments, mining location posts, homestead entry corner posts, and bearing trees must be protected against destruction, obliteration, and

damage; any damaged or obliterated markers must be reestablished as required by the department under [AS 34.65.020](#) and [AS 34.65.040](#);

(7) every reasonable effort must be made to prevent, control, and suppress any fire in the operating area; uncontrolled fires must be immediately reported;

(8) holes, pits, and excavations must be repaired as soon as possible; holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, or mining leasehold locations may be left open but must be maintained in a manner that protects public safety;

(9) on lands subject to a mineral or land estate property interest, entry by a person other than the holder of a property interest, or the holder's authorized representative, must be made in a manner that prevents unnecessary or unreasonable interference with the rights of the holder of the property interest.

<https://catalog.data.gov/ro/dataset/alaska-state-park-trails-through-ilma>

State park units are created by two methods, state legislation and management agreements. The data set for park units created through legislation, called Legislatively Designated Areas (LDAs) exists in another coverage. A significant number of state park units are created through Interagency Land Management Agreements (ILMAs). To acquire all state park boundaries and associated information, both LDA & ILMA data sets would be needed.

I did not find anything including “durable” property rights.

http://www.dnr.alaska.gov/mlw/mining/AK_MineralPolicy.pdf

The Alaska Constitution – Article VIII Alaska is the only State that has a separate article in its constitution devoted exclusively to natural resources. The framers of the constitution stated “The future wealth of the State of Alaska will depend largely on how it administers the immense and the varied resources to which it will fall heir.” It was important enough that the framers felt it necessary to give constitutional recognition to the policies that would guide management of the states endowment. Statements in article 08 of the constitution related to mineral development include: Statement of Policy -- It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for **maximum use consistent with the public interest...**

Mineral Rights -- Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law.

Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Mineral Leases and Permits -- The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law...

Alaska Statute – Title 27. Mining. Chapter 05. Administration and Services. Article 1. Department of Natural Resources. Section 27.05.010. Department responsible for mineral resources. (a) The department has charge of all matters affecting exploration, development, and mining of the mineral resources of the state, the collection and dissemination of all official information relative to the mineral resources, and mines and mining projects of the state, and the administration of the laws with respect to all kinds of mining. (b) The department is the lead agency for all matters relating to the exploration, development, and management of mining, and, in its capacity as lead agency, shall coordinate all regulatory matters concerning mineral resource exploration, development, mining, and associated activities. Before a state agency takes action that may directly or indirectly affect the exploration, development, or management of mineral resources, the agency shall consult with and draw upon the mining expertise of the department.

http://www.law.state.ak.us/pdf/opinions/opinions_1993/93-019_661930641.pdf

More than you probably need to know about mineral rights.