

**MINERAL MATERIALS SALES FOR USE IN FEDERAL-AID
HIGHWAY PROJECTS**

EXHIBIT
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MINERAL MATERIALS SALES FOR USE IN FEDERAL- AID HIGHWAY PROJECTS

IM 2017-101

Instruction Memorandum

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WASHINGTON, D.C. 20240

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Instruction Memorandum No. 2017-101

Expires: 09/30/2020

To: All Field Office Officials

From: Assistant Director, Energy, Minerals, and Realty Management

Subject: Mineral Materials Sales for Use in Federal-Aid Highway Projects

Program Area: Mineral Materials.

Purpose: This Instruction Memorandum (IM) outlines policy and guidance regarding the sale of mineral materials for use in Federal-aid highway projects. This policy revises previous guidance described in the Mineral Materials Disposal Handbook, Bureau of Land Management (BLM) Manual H-3600-1 (2002).

Policy/Action: The BLM may authorize the disposal of mineral materials through a sales contract under the authority of the Materials Act of 1947 (30 U.S.C. §§ 601-604) (Materials Act), even if the mineral materials will be used for a Federal-aid highway project, subject to the BLM's determination that the mineral materials sale is in the public interest.

When BLM sells mineral materials under the Materials Act, the mineral materials become the property of the purchaser after the materials have been excavated, paid for, and removed from Federal lands in accordance with the 43 CFR Part 3600 regulations and the applicable contract terms. Subsequent use or re-sale of the mineral materials is at the discretion of the purchasers, including actual or proposed use for a Federal-aid highway project.

Authorization of free use of mineral materials under the Materials Act is still prohibited if the materials will be used for a Federal-aid highway project.

Timeframe: Effective immediately.

Budget Impact: This policy will not result in any additional impact to mineral materials budgets. 43 CFR Part 3600 requires recovery of the BLM processing costs from the applicant, so costs associated with new applications that may arise as a result of this policy will be recovered.

Background: In 1987, the Associate Solicitor, Energy and Resources, issued an opinion that was not clear about whether the BLM could sell mineral materials under the Materials Act, if the materials would be used for Federal-aid highway projects (Material Trespass on Title 23 (Federal Aid Highway Act) Rights-of-Way (Sansonetti, Assoc. Sol, 1987) (1987 Opinion)). Although it was not clear whether the 1987 Opinion differentiated between free use permits and mineral materials sales, the BLM issued policy guidance in 1988 prohibiting all mineral materials disposals under the Materials Act, including both free use permits and sales contracts, if the materials would be used for Federal-aid highway projects. The BLM incorporated this guidance into BLM Manual Handbook H-3600-1, Appendix 1.

The BLM recently requested the Associate Solicitor, Division of Mineral Resources, to reconsider the 1987 Opinion with regard to whether the BLM could sell mineral materials to a purchaser who intended to use the materials in Federal-aid highway projects. In response, the Associate Solicitor issued an opinion entitled, Mineral Materials Sales for Use in Federal-Aid Highway Projects (Hawbecker, Assoc. Sol.) (2017 Opinion), which resolves the issue. The 2017 Opinion is included as Attachment 1.

The 2017 Opinion advises the BLM that it may sell mineral materials, even if the purchaser will use them for Federal-aid highway projects. Therefore, the BLM is now revising its policy to allow authorization of a sales contract under the Materials Act, even if the materials will be used for Federal-aid highway projects, so long as the BLM determines that a sales contract is in the public interest.

The 2017 Opinion supersedes the 1987 Opinion to the extent the 1987 Opinion could be viewed as conflicting with the 2017 Opinion with respect to mineral materials sales contracts. The 1987 Opinion remains intact with respect to prohibiting issuance of free use permits under the Materials Act.

Manual/Handbook Sections Affected: This IM transmits interim policy that we will incorporate into H-3600-I, Mineral Materials Disposal Handbook, at Table of Contents, Chapter 1 C, and Appendix 1 during the next revision.

Coordination: The Division of Solid Minerals consulted with State Offices, and coordinated preparation of this guidance with the Office of the Solicitor.

Contact: If you have any questions concerning the content of this IM, please contact me at

202-208-4201, or your staff may contact Mitchell Leverette, Division Chief, Solid Minerals (WO-320), at 202-912-7113 or mleverette@blm.gov.

Signed by:

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Energy, Minerals, and Realty Management

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Division of IT Policy and

1 Attachment

[1 – 2017 Opinion \(8 pp\)](#)