

# MEMORANDUM

CITY/BOROUGH OF JUNEAU  
155 South Seward Street, Juneau, Alaska 99801

**DATE:** May 3, 2011

**TO:** Board of Adjustment

**FROM:** Teri Camery, Planner  
Community Development Department

**FILE NO.:** VAR20110009

**PROPOSAL:** A Variance to allow development within 330' of four eagle nests along the Thane Road right-of-way.

## GENERAL INFORMATION

**Applicant:** State of Alaska DOT/PF

**Property Owner:** State of Alaska DOT/PF

**Property Address:** Thane Road

**Legal Description:** Thane Road right-of-way

**Parcel Code No.:** 0 Parcel

**Site Size:** 0

**Zoning:** 0

**Utilities:** CBJ Water and Sewer

**Access:** Thane Road

**Existing Land Use:** Thane Road right-of-way

**Surrounding Land Use:**

- North - Rural Reserve, low-density residential or vacant
- South - Industrial, Waterfront Industrial, low-density residential, or vacant
- East - Rural Reserve, low-density residential or vacant
- West - Rural Reserve, low-density residential or vacant

## **ATTACHMENTS**

Attachment 1 Development Permit Application  
Attachment 2 Variance Application  
Attachment 3 Applicant Letter  
Attachment 4 Nest locations  
Attachment 5 U.S. Fish and Wildlife Service Draft Recommendations

## **PROJECT DESCRIPTION**

DOT proposes to rehabilitate 4.5 miles of pavement on Thane Road between the intersections of Mount Roberts Street at the Rock Dump to the end of the road. The project includes the following:

- Road surface would be ground and replaced with 2.5 inches of asphalt concrete.
- Culverts would be repaired or replaced depending on condition.
- Approximately 1,200 feet of rock face along a shoulder would be removed to a depth of 6 feet to allow for centerline realignment.
- Guardrail would be replaced and upgraded at locations as needed.
- 644 feet of new sidewalk would be constructed near Mr. Roberts Street.
- Select areas of the road would be realigned to allow a four-foot shoulder between the fog line and guardrail.

This project is being reviewed concurrently as CSP20110002. The proposed development requires a Variance because construction would be within 330 feet of four different eagle nests along the road corridor during the summer nesting season, as shown on Attachment Four. The CBJ Land Use Code states the following:

### ***49.70.310 Habitat***

- (a) Development in the following areas is prohibited:*
- (2) Within 330 feet of an eagle nest on public land;*
- (3) Within 50 feet of an eagle nest on private land, provided that there shall be no construction within 330 feet of such nest between March 1 and August 31 if it contains actively nesting eagles;*

DOT/PF states that a certain number of eagles have always nested near the road, and therefore the road could not be maintained if the Variance were not granted. DOT/PF applied for an Eagle Permit from the U.S. Fish and Wildlife Service (USFWS) on April 1, 2011, which has not yet been issued. However USFWS has provided preliminary recommendations (Attachment 5) which will be addressed in the next section of this report.

## **BACKGROUND**

CBJ has traditionally relied on the expertise of the local office of the USFWS to evaluate and condition, if necessary, projects within the 330 foot eagle nest buffer. In September 2009, USFWS issued a new federal rule establishing eagle permits to allow for disturbance, and, in special cases, take of eagles. USFWS eagle permits are voluntary, not mandatory. However issuance of an eagle permit provides the applicant with a guarantee against federal prosecution under the Bald and Golden Eagle Protection Act if the project results in disturbance or take. It's up to the applicant to determine whether the risk of disturbance from the project is worth the time and cost of obtaining the federal permit. USFWS has two types of permits, one for disturbance and one for take. The definition of disturbance includes injuring an eagle or interfering with the eagle's feeding or breeding habits. If an applicant receives a permit for disturbance, any activity related to the approved project description is allowed except for cutting the tree or killing the eagle, which would require a separate permit for eagle take. Eagle take permits are granted only in unavoidable or highly unusual circumstances.

CBJ has always relied on local USFWS expertise to evaluate variances to the eagle tree setback. If an applicant has obtained an eagle permit from USFWS through the new federal permit process, we will defer to the USFWS recommendation. CBJ will not, however, repeat federal permit conditions on CBJ authorizations. If the applicant has not obtained a USFWS permit, since the permit is voluntary, CBJ will seek as much information as possible from USFWS about the sensitivity of the particular nest and what modifications may be needed to ensure protection.

## **USFWS Recommendations**

The USFWS eagle permit for this project has not been issued, however USFWS has provided draft recommendations, subject to change, in Attachment 5. The draft permit conditions allow work to proceed in the Thane Road right-of-way consistent with the Project Description and without any significant timing restrictions. The draft conditions also require the following:

- Nesting surveys which must be conducted annually, prior to construction, to identify all eagle nests within 660 feet of the proposed construction activities.
- Each eagle nest must be monitored throughout the construction season. Active nests must be monitored in conformance with the USFWS Bald Eagle Construction Procedures and Requirements (as included with Attachment 5), which includes documentation of eagle behavior in response to construction activity.
- The applicant must submit an Annual Report summarizing all monitoring information.

## **ANALYSIS**

### **Variance Requirements**

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of

Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

1. ***That the relaxation applied for or a lesser relaxation specified by the Board of Adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.***

The relaxation applied for would give substantial relief to the property owner by allowing maintenance of Thane Road. A lesser relaxation is not practical because the maintenance must take place within 330' of existing eagle nests, and failure to maintain the roadway would result in a public safety hazard. The Variance would be consistent with justice to other property owners along the highway by allowing required maintenance to provide safe access to private property.

**This criterion is met.**

2. ***That relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare be preserved.***

The intent of Title 49 is established in Section 49.05.100 Purpose and Intent. Those sections, which are applicable to the requested variance, are as follows:

- 1) To achieve the goals and objectives and implement the policies of the Juneau Comprehensive Plan and the coastal management program;
- 2) To ensure that future growth and development in the city and borough is in accord with the values of its residents;
- 3) To identify and secure, for present and future residences, the beneficial impacts of growth while minimizing the negative impacts;
- 4) To ensure that future growth is of the appropriate type, design, and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;
- 5) To provide adequate open space for light and air; and
- 6) To recognize the economic value of land and encourage its proper and beneficial use.

A grant of the Variance would allow construction to proceed within the summer building season while minimizing disturbance to eagles by following the draft permit conditions of the USFWS Eagle Permit, which includes eagle nest monitoring, and reporting requirements (Attachment 5). The Variance is therefore in accordance with intent numbers 2, 3, 4, and 6.

**This criterion is met.**

**3. *That the authorization of the Variance will not injure nearby property.***

Construction within the eagle tree setback would not injure nearby property. All work would be within the right-of-way.

**This criterion is met.**

**4. *That the Variance does not authorize uses not allowed in the district involved.***

Road construction is allowed in all zoning districts; therefore the Variance does not authorize uses not allowed in the district involved.

**This criterion is met.**

**5. *That compliance with the existing standards would:***

**(A) *Unreasonably prevent the owner from using the property for a permissible principal use;***

Compliance with the standard would unreasonably prevent the owner, DOT/PF, from maintaining Thane Road. Thane Road is zoned Rural Reserve, low-density residential, Industrial, or Waterfront Industrial for the length of the proposed development. However highway maintenance is not technically considered a permissible principal use in any zoning district.

**This sub-criterion is not met.**

**(B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;***

Compliance with the standard would unreasonably prevent the owner, DOT, from maintaining the Thane Road. Allowing the highway to fall into disrepair would create a public safety hazard and be detrimental to the amenities, appearance, and features of existing development in the neighborhood of the subject property. Comparing the Thane Road right-of-way to other residential properties in the neighborhood adjacent to the right-of-way is not a relevant comparison.

**This sub-criterion is met.**

**(C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive;***

There are no unique physical features along Thane Road except for the avalanche area. However the

avalanche area is not a factor in the need for the Variance. The roadway is mostly flat with only the occasional gradual hill.

**This sub-criterion is not met.**

*or*

**(D) *Because of preexisting nonconforming conditions on the subject parcel the grant of the Variance would not result in a net decrease in overall compliance with the Land Use Code, CBJ Title 49, or the building code, CBJ Title 19, or both.***

There are no pre-existing non-conforming conditions within the Thane Road right-of-way.

**This sub-criterion is not met.**

**Criterion 5 is met because sub-criterion 5B is met.**

**6. *That a grant of the Variance would result in more benefits than detriments to the neighborhood.***

A grant of the Variance would allow the 4.5 mile stretch of Thane Road to be maintained according to current road safety standards, which would provide a significant benefit to the neighborhood. Draft conditions enforced by the U.S. Fish and Wildlife Service through the applicant's eagle permit would ensure that detriments to eagle nests and eagle nesting behavior would be minimized to the greatest extent practicable. Therefore the Variance would result in more benefits than detriments to the neighborhood.

**This criterion is met.**

#### **49.70.900-49.70.1097 COASTAL DEVELOPMENT, HABITAT, AND WETLANDS**

The project does not affect wetlands or other sensitive habitat. An Alaska Department of Fish and Game permit are required for culvert replacement along the route. Further review of CBJ coastal development, habitat, and wetland regulations is not necessary.

#### **ALASKA COASTAL MANAGEMENT PROGRAM (ACMP)**

Not applicable. This project does not require a state-coordinated ACMP review.

## **FINDINGS**

***1. Is the application for the requested Variance complete?***

**Yes.** We find that the application contains the information necessary to conduct full review of the proposed construction project. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.20.

***2. Will the proposed development comply with the Alaska Coastal Management Program?***

**Not applicable.**

***3. Does the variance as requested, meet the criteria of Section 49.20.250, Grounds for Variances?***

**Yes.** Based on the analysis above, staff finds that the proposal does meet the criteria of CBJ 49.0.250, Grounds for Variances. Specifically, the Variance meets criteria 1, 2, 3, 4, 5B, and 6.

## **RECOMMENDATION**

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, VAR20110009. The Variance would allow for rehabilitation and repair of Thane Road within the 330-foot eagle nest setback of four eagle nests.

# DEVELOPMENT PERMIT APPLICATION

(APPLICANT - PLEASE FILL IN THE PROJECT/APPLICANT INFORMATION)

Project Number	<b>CITY and BOROUGH of JUNEAU</b>	Date Received:
Project Name (City Staff to assign name)		

PROJECT / APPLICANT INFORMATION

Project Description <b>Thane Road Pavement Rehabilitation</b>			
<b>PROPERTY LOCATION</b>			
Street Address <b>Thane Rd., Mt Roberts St. to dead end</b>		City / Zip <b>Juneau 99801</b>	
Subdivision (if known)	Survey (if known)	Block / Tract (if known)	Lot (if known)
Assessor's Parcel Number (if known) <b>6</b>			
<b>LANDOWNER /LESSEE</b>			
Property Owner's Name <b>State of AK, DOT&amp;PF</b>		Contact by E-Mail: <b>jane.gendron@alaska.gov</b>	Contact Person <b>Jane Gendron</b>
Mailing Address <b>6860 Glacier Hwy. Juneau, AK 99801</b>		Home Phone No.	Work Phone No. <b>465-4499</b>
FAX No.			
<b>LANDOWNER/LESSEE CONSENT</b> (Required for Planning permits not needed on Building/Engineer permits)		<b>INITIAL ALL THAT MAY APPLY</b>	
I am (we are) the owner(s) or Lessee of the property subject to this application and I (we) consent as follows: A. This application for a land use or activity review for development on my (our) property is made with my complete understanding and permission. B. I (we) grant permission for officials and employees of the City and Borough of Juneau to inspect my property as needed for purposes of this application.		APPLICATION TYPE	
<input checked="" type="checkbox"/> <b>Landowner/Lessee Signature</b>		OWNER'S INITIALS	
<input checked="" type="checkbox"/> <b>Landowner/Lessee Signature</b>		ALLOWABLE USE	
Date		CONDITIONAL USE	
Date		VARIANCE	
NOTICE: The City and Borough of Juneau staff may need access to the subject property during regular business hours and will attempt to contact the landowner in addition to the formal consent given above. Further, members of the Planning Commission and/or the Design Review Board may visit the property and may do so during the weekend before the scheduled public hearing date.		DESIGN REVIEW	
		SUBDIVISION	
		OTHER	
<b>APPLICANT</b> (If same as OWNER, write "SAME" and sign and date at X below)			
Applicant's Name <b>Jane Gendron DOT&amp;PF Environ Mgr</b>		Contact Person	Work Phone No.
Mailing Address		Home Phone No.	FAX No.
<input checked="" type="checkbox"/> <b>Jane Gendron DOT&amp;PF Environ Mgr</b>		<input checked="" type="checkbox"/> <b>4/1/11</b>	
Applicant's Signature		Date of Application	

(OFFICE USE ONLY BELOW THIS LINE)

STAFF APPROVALS	C K	PERMIT TYPE	SIG	DATE RECEIVED	APPLICATION NO.	C K	PERMIT TYPE	DATE RECEIVED	APPLICATION NO.
		ALLOWABLE USE APPROVAL					WATER PERMIT		
		CONDITIONAL USE APPROVAL					SEWER PERMIT		
		VARIANCE					GRADING PERMIT		
		DESIGN REVIEW APPROVAL	MINOR MAJOR				DRIVEWAY PERMIT		
		SUBDIVISION	MINOR MAJOR PUD				RIGHT-OF-WAY PERMIT		
		STREET VACATION					PUB. FAC. TRANSMISS. & EXCAV. PERMIT		
		SIGN APPROVAL	LOCATED IN HISTORIC DISTRICT? <input type="checkbox"/> YES <input type="checkbox"/> NO				OTHER - (Describe)		
		BUILDING PERMIT					Permit Intake Initials		
	Zone		Total Lot Area	Required Setbacks					
			Front _____ Back _____ Side _____ Other _____						
COMMENTS:									

[J:\FORMS\CDIFORMS\PERMFORM.XLS REV. 2/18/99]

NOTE: DEVELOPMENT PERMIT APPLICATION FORM MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS

ATTACHMENT 1



# ATTACHMENT 2

## VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <u>VAR2011 0009</u>	Date Received																				
<b>TYPE OF VARIANCE REQUESTED:</b>																							
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="checkbox"/> Variance to the Sign Standard (VSG)             </div> <div style="width: 48%;"> <input type="checkbox"/> Variance to Dimensional Standards (VDS)             </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="checkbox"/> Variance to Habitat Setbacks (VHB)             </div> <div style="width: 48%;"> <input type="checkbox"/> Variance to Parking Requirements (VPK)             </div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input checked="" type="checkbox"/> Variance to Setback Requirements (VSB)             </div> <div style="width: 48%;"></div> </div>																							
<b>DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:</b> DOT&PF is proposing a project to rehabilitate pavement on Thane Road from Mt. Roberts St. to the end of the road. Activities would include grinding and paving, culvert work, guardrail work, new sidewalks, shoulder widening, new signage, and road striping.																							
<b>Previous Variance Applications?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <span style="float: right;">Date of Filing: <u>2/25/09</u></span>																							
Previous Case Number(s): <u>VAR2009-00002</u>																							
<b>Was the Variance Granted?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																							
<b>UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S):</b> _____ None																							
<b>UTILITIES AVAILABLE:</b> <b>WATER:</b> <input type="checkbox"/> Public <input type="checkbox"/> On Site <b>SEWER:</b> <input type="checkbox"/> Public <input type="checkbox"/> On Site																							
<b>WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?</b> Eagles have nested in the proposed project area prior to construction. The birds are habituated to the surrounding neighborhood and are used to excessive road noise.																							
<b>WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?</b> Residents would suffer the effects of a road in poor and deteriorating condition.																							
For more information regarding the permitting process and the submittals required for a complete application, please see the reverse side.  If you need any assistance filling out this form, please contact the Permit Center at 586-0770.	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">VARIANCE FEES</th> <th style="text-align: center;">Fees</th> <th style="text-align: center;">Check No.</th> <th style="text-align: center;">Receipt</th> <th style="text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td>Application Fees</td> <td style="text-align: right;">\$ <u>400.00</u></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Adjustment</td> <td style="text-align: right;">\$ _____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>Total Fee</td> <td style="text-align: right;">\$ <u>400.00</u></td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table>			VARIANCE FEES	Fees	Check No.	Receipt	Date	Application Fees	\$ <u>400.00</u>	_____	_____	_____	Adjustment	\$ _____	_____	_____	_____	Total Fee	\$ <u>400.00</u>	_____	_____	_____
VARIANCE FEES	Fees	Check No.	Receipt	Date																			
Application Fees	\$ <u>400.00</u>	_____	_____	_____																			
Adjustment	\$ _____	_____	_____	_____																			
Total Fee	\$ <u>400.00</u>	_____	_____	_____																			

**NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM**

# ATTACHMENT 3

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

SOUTHEAST REGION – PRECONSTRUCTION  
PRELIMINARY DESIGN AND ENVIRONMENTAL

**SEAN PARNELL, GOVERNOR**

6860 Glacier Highway  
P.O. Box 112506  
JUNEAU, ALASKA 99811-2506  
PHONE: (907)465-4499  
FAX: (907)465-6216

April 1, 2011

Borough Assembly,  
City/Borough of Juneau  
155 Seward St.  
Juneau, AK 99801

RE: Thane Road Pavement Rehabilitation, Project # 69340-Variance Application

To the Borough Assembly:

Please accept the accompany variance application and supporting material regarding a variance for an eagle disturbance. The DOT&PF is proposing to perform a pavement rehabilitation project on Thane Rd. There are eagle nests located in the project area so a variance will be necessary to proceed with the project. The accompanying materials give of full description to project location and details. Also included is a copy of the USF&WS eagle permit application. If you have any questions please do not hesitate to contact me.

Sincerely,



Jane Gendron  
Southeast Region Environmental Manager.

### Attachments

Variance Application  
Variance Approval Criteria  
Project Description  
Project Area Maps (1,2,3 of 5)  
Plan Set  
Complete Eagle Take Application

## Variance Approval Criteria

*(1) The relaxation applied for or a lesser relaxation specified by the board of adjustment would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*

Relaxation of borough code would give substantial direct relief to the right-of-way (ROW) owner, the DOT&PF, to reduce maintenance costs to Thane Road. The indirect benefit of justice delivered to property owners would be safe access for all users of the road.

*(2) Relief can be granted in such a fashion that the intent of this title will be observed and the public safety and welfare preserved;*

The intent of CBJ§49.20.200 will be preserved throughout the process of the project as the project has no nexus between the eagle nests and the safety and welfare of the area residents. Safety improvements would result because of the project. Any eagles in the area are already habituated to local conditions and lifestyle patterns of the neighborhood and there would be no direct interference to those nests or birds resulting from the project. All conditions imposed by other permitting agency would be adhered to.

*(3) The authorization of the variance will not injure nearby property;*

The issuance of the variance to proceed with the project would not cause injury to nearby or adjoining property because all work will be done within the road prism and not beyond the ROW.

*(4) The variance does not authorize uses not allowed in the district involved;*

All construction activities to be performed are within the scope of regular road maintenance and normal construction standards.

*(5) Compliance with the existing standards would:*

*(A) Unreasonably prevent the owner from using the property for a permissible principal use;*

Unreasonably prevent the DOT&PF from providing a safe and efficient roadway.

*(B) Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*

Unreasonably prevent the DOT &PF the ability to maintain safe public access to the residents of Thane.

*(C) Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*

Not Applicable

*(D) Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*

Preexisting conditions is the presence of eagle nests within 660 feet of the road. The activities proposed by this project either conform with or do not affect Land Use Code, title 49 or Building Code 19.

*(6) A grant of the variance would result in more benefits than detriments to the neighborhood.*

By granting the variance the residents and population would enjoy the benefit of smoother and safer travel on Thane Road via a new wear surface of pavement; improved pedestrian access and travel; and safer conditions such as the new wear surface, new road lines and signage, safety ends on guardrail and other improvements.

## Juneau-Thane Road Pavement Rehabilitation Project, #69340

### Project Location and Description

#### **Project Location**

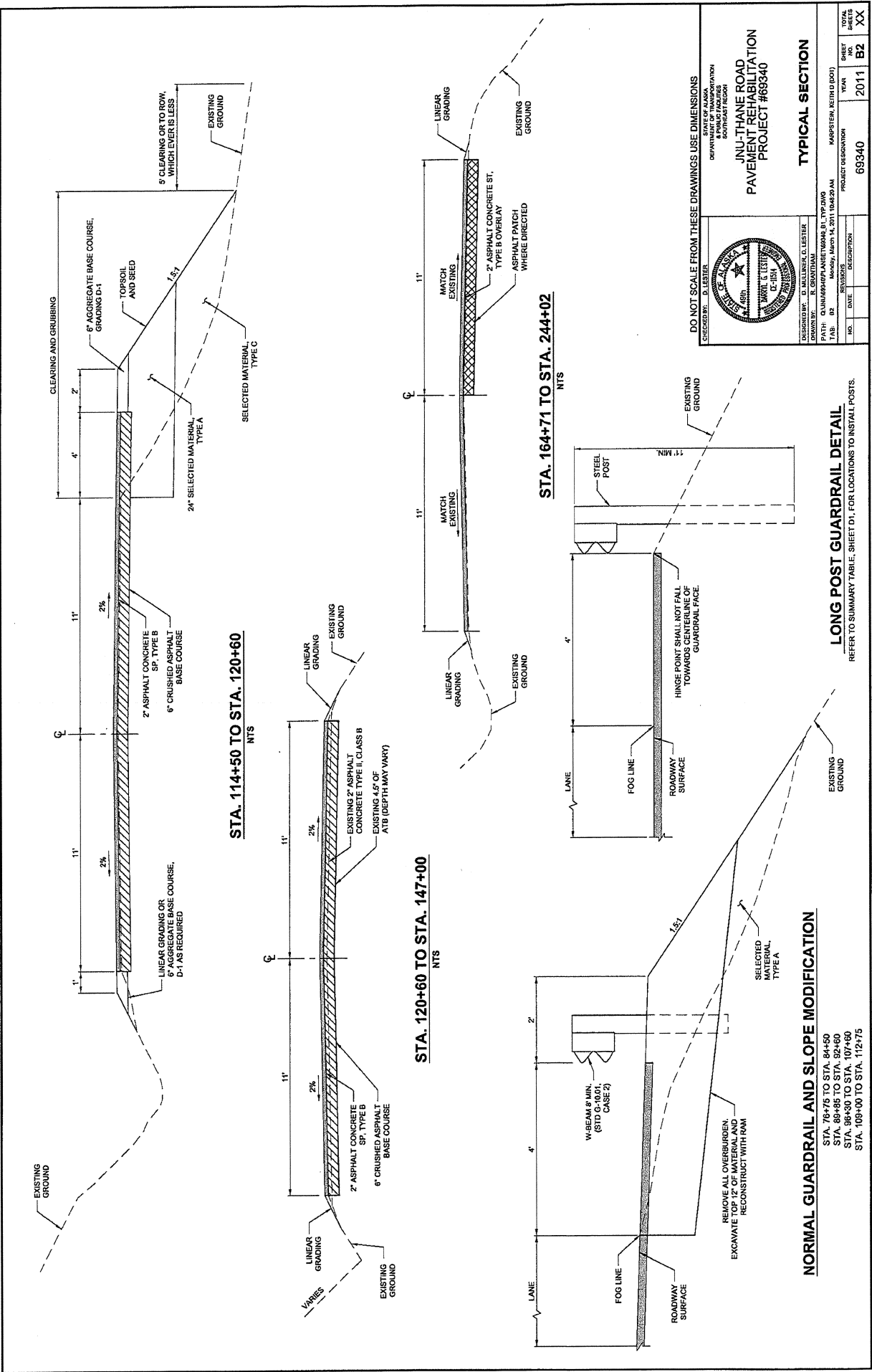
The proposed project is located on Thane Road. The beginning of the project (BOP) is at the intersection of Mt. Roberts Street, continuing 4.5 miles to the southeast to the end of the road, which is the end of the project (EOP). The project is located in Section 22, T41S, R67E, Sections 4 & 5, T42S, R68E, and Sections 30, 31, & 32, T41S, R68E, Copper River Meridian, on the Juneau B-1 USGS Quadrangle Map (See Sheets 1, 2, & 3).

#### **Project Description**

Thane Road pavement is near the end of its useful life. The proposed project would make the following upgrades and rehabilitate 4.5 miles of the existing pavement surface:

- Road surface would be ground and replaced with 2.5 inches of asphalt concrete.
- 81 Culverts would be repaired or replaced depending on condition.
- Approximately 1,200 feet of rock face along a shoulder would be removed to a depth of 6 feet to allow for centerline realignment and improved drainage control.
- Guardrail would be replaced and upgraded at locations as needed.
- 644 feet of new sidewalk would be constructed near Mt. Roberts St.
- Select areas of the road would be widened to allow a 4 foot shoulder between the fog line and guardrail.





STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
SOUTHEAST REGION

DESIGNED BY: D. MULLER, G. LESTER  
DRAWN BY: R. GRANTHAM

DATE: \_\_\_\_\_  
NO. \_\_\_\_\_

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

CHECKED BY: D. LESTER

PROJECT #69340

PROJECT DESIGNATION: 69340

YEAR: 2011

SHEET NO.: B2

TOTAL SHEETS: XX

# ATTACHMENT 5

## Teri Camery

---

**From:** Schelb, Christopher A (DOT) [chris.schelb@alaska.gov]  
**Sent:** Friday, April 29, 2011 8:19 AM  
**To:** Teri Camery  
**Subject:** FW: Draft Permit Conditions  
**Attachments:** Draft Condition 4-27-2011.docx; Grind and Repave Monitoring Protocols.pdf

Hi Teri:

Here is a copy of the e-mail and attachments that Jordan Muir sent me regarding the Thane Rd eagle permit. This should be enough to get the variance process rolling again. Please let me know if you need anything else. Take care.

Chris

---

**From:** Jordan\_Muir@fws.gov [mailto:Jordan\_Muir@fws.gov]  
**Sent:** Wednesday, April 27, 2011 11:24 AM  
**To:** Schelb, Christopher A (DOT)  
**Cc:** Scott\_Frickey@fws.gov  
**Subject:** Draft Permit Conditions

Chris,

attached are draft U.S. Fish and Wildlife Eagle Take Permit conditions for the Thane Road Project. Draft conditions are intended to provide CBJ an idea of what the project's permit conditions may look like and, subsequently, are subject to change prior to permit issuance. Hopefully, they'll work for the intended purpose. Good luck and let me know if I can provide any additional information!

-Jordan

*(See attached file: Draft Condition 4-27-2011.docx) (See attached file: Grind and Repave Monitoring Protocols.pdf)*

Jordan J. Muir  
USFWS Region 7 Eagle Permit Biologist  
1011 East Tudor Road, MS-201  
Anchorage, Alaska 99503  
Office: 907-786-3503  
Fax: 907-786-3927



D. This permit is only valid with authorization from Alaska Department of Fish and Game. Contact:

**Alaska Department of Fish and Game**  
**Division of Wildlife Conservation**  
**PO Box 115526**  
**Juneau, AK 99811-5526**  
**(907) 465-4148**  
**Dfg.dwc.permits@alaska.gov**

E. You are authorized to disturb bald eagles nesting among 8 nests along Thane Road, in Juneau, Alaska from May 20, 2011 – December 31, 2011. Potential impacts to bald eagles include loss of one year's breeding productivity for six breeding pairs. Authorized construction activities include:

- grind and repaving
- repairing and replacing culverts
- removing rock face (including blasting) to allow for centerline realignment
- replacing and upgrading guardrails
- installing approximately 650 feet of new sidewalk near Mt. Roberts St.
- realigning the road to allow a 4 foot shoulder between the fog line and guardrail.

F. You must comply with the following avoidance, minimization, or other mitigation measures:

- i) Construction activities shall be scheduled to minimize disturbance to nesting eagles.
- ii) The direction of construction activities shall be planned with respect to bald eagle nesting phenology to minimize disturbance to nesting eagles.
- ii) The Contractor shall work with the Project Engineer to limit time necessary within the 330' primary zone of nests only to that required for completion of the work.

G. You are required to monitor eagle use of nests potentially affected by your activities until the expiration of the permit. Monitoring shall be conducted each year construction activities occur and consist of the following:

i) Spring (May 1 – June 1) bald eagle nesting surveys shall be conducted preceding construction to identify new, previously unidentified, eagle nests within 0.5 mile of the proposed construction activities. All new nests must immediately be reported to the migratory bird permit issuing office. Contact: **Jordan J. Muir, Migratory Bird Management, U.S. Fish and Wildlife Service, 1011 E Tudor Road (MS 201), Anchorage, AK 99503, (907) 786-3503, [Jordan\\_Muir@fws.gov](mailto:Jordan_Muir@fws.gov).**

ii) Aforementioned surveys shall also identify the activity status (active vs. inactive) of each nest within 0.5 mile of proposed construction activities. Active nests shall be monitored while construction activities are conducted within 330' of nests (0.5 mile for blasting activities). You are required to follow monitoring protocols as set forth in the "Bald Eagle Construction Procedures and Requirements" document co-developed by ADOT and USFWS.

H. You must submit an annual report summarizing the information you obtained through monitoring (including copies of all Bald Eagle and Construction Monitoring Reports) to the Service by January 31, 2012. Submit reports to:

**U.S. Fish and Wildlife Service**  
**Migratory Bird Management – M/S 201**  
**ATTN: Jordan Muir**  
**1011 E Tudor Road**

**Anchorage, AK 99503 (907-786-3503, [Jordan\\_muir@fws.gov](mailto:Jordan_muir@fws.gov))**

I. You must immediately notify the migratory bird permit issuing office at (907-786-3503 or 907-786-3693) regarding any apparent injury or death occurring to any eagle, including viable eggs, during project activities. You must immediately transport any injured eagle to the Juneau Raptor Center (907-790-5424 or 907-586-8393 or by emergency pager at 907-790-5424).

J. You must contact the migratory bird issuing office (907-786-3503 or 907-786-3693) immediately upon discovery of any unanticipated take.

K. You remain responsible for all outstanding monitoring requirements and mitigation measures required under the terms of the permit for take that occurs prior to cancellation, expiration, suspension, or revocation of the permit.

L. The authorizations granted by permits issued under this section apply only to take that results from activities conducted in accordance with the description contained in the permit application and the terms of the permit. If the permitted activity changes, you must immediately contact the Service to determine whether a permit amendment is required in order to retain take authorization.

M. This permit does not authorize intentional take of live eagles, eggs or young.

N. This permit does not authorize intentional, or incidental, take of eagle nests.

O. While the permit is valid and for up to 3 years after it expires, you must allow Service personnel, or other qualified persons designated by the Service, access to the areas where eagles are likely to be affected, at any reasonable hour, and with reasonable notice from the Service, for purposes of monitoring eagles at the site(s).

P. You may delegate the authority granted in this permit to the following subpermittee(s): any other person who is (1) employed by or under contract to you for the activities specified in this permit, or (2) otherwise designated a subpermittee by you in writing. Any subpermittee who has been delegated this authority may not re-delegate to another individual/business.

Q. Subpermittees must be at least 18 years of age. You are responsible for ensuring that your subpermittees are qualified to perform the work and adhere to the terms of your permit. You are also responsible for maintaining current records of designated subpermittees. As the permittee, you are ultimately legally responsible for compliance with the terms and conditions of this permit and that responsibility may not be delegated.

R. You and any subpermittees must carry a legible copy of this permit and display it upon request whenever exercising its authority.

S. This permit does not authorize you to conduct activities on Federal, State, Tribal, or other public or private property other than your own without additional prior written permits or permission from the agency/landowner.

T. You must maintain records as required in 50 CFR 13.46. All records relating to the permitted activities must be kept at the location indicated in writing by you to the migratory bird permit issuing office.

U. Acceptance of this permit authorizes the U.S. Fish and Wildlife Service to inspect and audit or copy any permits, books or records required to be kept by the permit and governing regulations (50 CFR 13.46).

V. Permittees and subpermittees operating under this permit may not take or disturb eagles contrary to the laws or regulations of any State, Tribal, or Municipal government, and none of the privileges of this authorization are valid unless the permittee possesses the appropriate State permits, or other authorizations, if required.

## BALD EAGLE CONSTRUCTION PROCEDURES AND REQUIREMENTS

---Temporary standard monitoring protocol for Grind and Repave projects---

---

These requirements are in effect during the periods noted below:

A. Nest Selection—1 March through May 31

B. Rearing Season—1 June through August 31 (nesting young must have fledged)

- 1) **Markings:** Must be visible by the construction monitor
  - a) The right-of-way will be marked at the point nearest each active nest
  - b) The right-of-way will be marked at 100' intervals from that point
  - c) The start and end points of the 330' primary zone will be marked
- 2) **Observers:**
  - a) There will be one Eagle nest observer
  - b) There will be one Construction observer
  - c) Both observers will have synchronized watches
  - d) Synchronized video cameras can be used, and are strongly recommended, but this does not remove the requirement for two observers
  - e) Observers will meet the DOT&PF/USFWS qualifications. Observers will:
    - The Lead Monitor is defined as a person recognized by USFWS and DOT&PF as being qualified, and/or formally educated in the biological sciences, well experienced in recognizing specific patterns and changes of eagle behavior and capable of recording those observations in a scientific manner, and is contracted by the landowner, company or entity (Responsible Party) responsible for having the activity monitored.
    - Monitors will have either training or formal education in the biological sciences on recognizing specific patterns and changes in eagle behavior and capable of recording those observations in a scientific manner. Reports to the Lead Monitor.
- 3) **Documentation**
  - a) Observers are to record activity in 1 minute increments while in the primary zone
  - b) Notations on when the crews reach each 100' road marker
  - c) Both observers documents will be reviewed to correlate construction activity to bird response

---

### Rationale

DOT&PF is attempting to generate data to provide to USFWS for the purpose of supporting a programmatic agreement between USFWS and DOT&PF that would allow, in the future, certain types of

paving activities to be conducted without further monitoring or permits. This data would be collected using the methods outlined above. These requirements would be effective immediately for all Juneau projects and other projects as required by USFWS to obtain the required information. These protocols are expected to monitor approximately 30 nests on various projects and are not permanent procedures.

The USFWS noted that, "The specific thing we want to measure is the nesting birds' reaction as the pavement ripping machine, the paver, and other loud construction machines approach the nest. We need careful documentation of how far the equipment is at any given time, to correlate with bird activity at the nest. That is why we discussed marking the right-of-way at the point nearest each active nest, and at 100-foot intervals away from that point. We'd then post an observer to record how far away the machines in question are, at one-minute intervals, during the times that there is work within 330 feet of each nest. This observer might need to move occasionally to see how far away the machinery is, and would probably not be able to see the nest most of the time.

We also want to know how the birds react, so we need to post a monitor to watch the nest and record bird activity during the same one-minute intervals (thus, the observers must have synchronized watches). This observer would not be able to carefully document how far away the machinery is most of the time. With pre-printed data forms, observations could be recorded very quickly, or voice observations could be recorded for later transcription. Video-recording might be particularly useful here, too.

It is very unlikely that one observer would be able to see both the construction activity in relation to the marker on the right-of-way and bird activity at the nest. General observations of both construction operations and eagle behavior by one observer over 15-minute periods would not provide the level of information we need to document how the grind/repave operation affects eagles. The Douglas Highway project is expected to have about 3 active territories. The Glacier Highway project would add several more. Between them, we likely would have a small but meaningful sample. If the protocol proves useful, perhaps we could increase the sample size with other re-paving projects (ideally getting a sample of 30 or more active nests, if possible), but I do not anticipate that we'd continue this level of intense monitoring indefinitely."

## **LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

### **EAGLE NEST RESTRICTIONS**

Several eagle nest trees are located in proximity to the project limits. The trees that are located within 660' of the project are shown in the plans.

#### **1. Definitions**

- a) Primary Zone. The Primary Zone shall extend 330' (Category A) / 660' (Category B) feet from the eagle nest tree.
- b) Secondary Zone. The Secondary Zone shall extend one-half mile from the eagle nest tree.
- c) Nest Selection Period: The Nest Selection Period is between March 1 and May 31.

W. The U.S. Fish and Wildlife Service is not liable for any damage or injury to person, wildlife, or property that occurs as the result of carrying out the activities associated with this permit.

X. The terms and conditions of this permit that are not specifically prescribed by regulations at 50 CFR parts 10, 13, and 22, should not be construed as precedent and subject to revision for purposes of any future permit issued under this section.

- d) Young Rearing Period: The Young Rearing Period is between June 1 and August 31.
- e) Fledging: A young bird that is capable of flight but continues to stay near the nest.

2. To avoid violations of the Bald Eagle Protection Act, blasting activities shall be conducted in accordance with the USFWS Bald Eagle Management Guidelines.

## Bald Eagle Monitoring Data Report

Nest #: \_\_\_\_\_ Start Time: \_\_\_\_\_ Name of Monitor: \_\_\_\_\_  
 Date: \_\_\_\_\_ End Time: \_\_\_\_\_ Name of Supervisor: \_\_\_\_\_  
 Tree Status<sup>1</sup>: \_\_\_\_\_ Tree type<sup>2</sup>: \_\_\_\_\_ # Adult Present: \_\_\_\_\_ # Young Present: \_\_\_\_\_

Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T: _____	W: _____	C: _____	P: _____
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T: _____	W: _____	C: _____	P: _____
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T: _____	W: _____	C: _____	P: _____
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T: _____	W: _____	C: _____	P: _____
	Description of ongoing construction events:				
	Notes/Comments:				

**Sworn Affidavit:** I have read and understand the USFWS Bald Eagle Monitoring Guidelines. This report represents a true, accurate, and representative description of the site conditions and eagle behavior at the time of monitoring.

\_\_\_\_\_  
Signature of Monitor

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

Nest #: \_\_\_\_\_ Monitoring Date: \_\_\_\_\_ Monitor's signature: \_\_\_\_\_  
 Supervisor's signature: \_\_\_\_\_

Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				

**Sworn Affidavit:** I have read and understand the USFWS Bald Eagle Monitoring Guidelines. This report represents a true, accurate, and representative description of the site conditions and eagle behavior at the time of monitoring.

\_\_\_\_\_  
 Signature of Monitor

\_\_\_\_\_  
 Signature of Supervisor

\_\_\_\_\_  
 Date



Nest #:

Monitoring Date:

Monitor's signature: \_\_\_\_\_

Supervisor's signature: \_\_\_\_\_

Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				

**Sworn Affidavit:** I have read and understand the USFWS Bald Eagle Monitoring Guidelines. This report represents a true, accurate, and representative description of the site conditions and eagle behavior at the time of monitoring.

Signature of Monitor \_\_\_\_\_

Signature of Supervisor \_\_\_\_\_

Date \_\_\_\_\_

Nest #:

Monitoring Date:

Page 4

Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				
Time	Behavioral activity observed (list all that apply):				
	Weather conditions	T:	W:	C:	P:
	Description of ongoing construction events:				
	Notes/Comments:				

**Sworn Affidavit:** I have read and understand the USFWS Bald Eagle Monitoring Guidelines. This report represents a true, accurate, and representative description of the site conditions and eagle behavior at the time of monitoring.

\_\_\_\_\_  
Signature of Monitor

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

### **Instruction for completing the Bald Eagle Monitoring Data Report**

1. Insert the nest identification number, date for which the monitoring is occurring, Start time is the time at which monitoring is initiated, and end time is when the daily monitoring is completed. The monitor and the monitor's supervisor should print their name on the first page, a sign all other pages.

2. Tree Status is either L = live, D = dead, or A = artificial structure.

3. Tree type is either P = native pine, H = native hardwood, E = exotic.

4. All data reports should have an attached map of the nest territory that includes the location of the project. Major territory flights, including the time of the flight, should be drawn on this map.

5. Record all behavior events observed during the monitoring period. The following abbreviations should be used. CT = courtship; MAT = breeding/mating; NR = nest repair; INC = incubating; BRO = brooding; AF = adult feeding; YF = young being fed; TD = territory defense; STD/DV going from incubation to standing associated with distress calls; FL/DV = flushing with distress calls; DC = distress calls not associated with standing or flushing; PF = premature fledging. A monitoring event that observed nest repair, courtship and adult feeding may be recorded as NR-CT-AF. Any other behavior can be listed or described. Any abnormal behavior should be noted and described in the notes section if more space is required.

6. Enter the current weather conditions for each observation period in the appropriate place. On the data report, T = Temperature (EF); W = Wind speed & direction; C = Cloud Cover (%); P = Precipitation.

7. Record all ongoing construction/project activities that occur during the monitoring period. The following abbreviations should be used for common activities (unlisted activities should be described):

- FP = fill placement,
- SP = slab pouring,
- SC = sidewall construction,
- TP = truss placement,
- R = roofing,
- EW = external finish work,
- IW = internal finish work;
- IFR = infrastructure work;
- HE = heavy equipment work;
- CRN = work involving a crane.
- GMP = Grinding/milling pavement
- PV= Paving previously paved road
- PVG= Paving previous gravel road
- DT= Ditching
- GR= Guardrail Installation
- DP= Driving Guardrail piles

Provide details on infrastructure and heavy equipment work.

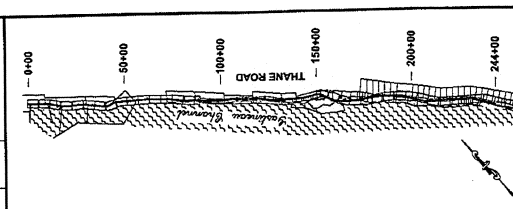
8. Any information that needs further explanation or any unusual event should be record in the Notes/Comments section. If more space is required, a supplemental sheet can be attached to this monitoring report. This supplemental sheet should clearly indicate the nest involved, the date of the monitoring, the monitoring time period to which the comment belongs (especially if needed for more than one monitoring time period), and should be signed by the monitor and supervisor.

9. In the appropriate place at the top of page 1, record the number of adults present at the nest during the entire monitoring period.

10. In the appropriate place at the top of page 1, record the number of young present at the nest during the entire monitoring period.

[illegible]

KARPSTEIN, KEITH D (DOT)  
Monday, March 14, 2011 10:47:05 AM  
YAB: A2

[illegible]

### PLAN LEGEND



DESIGNED BY: D. MULLINER, D. LESTER  
DRAWN BY: R. GRANTHAM  
STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION  
CIVIL ENGINE DIVISION

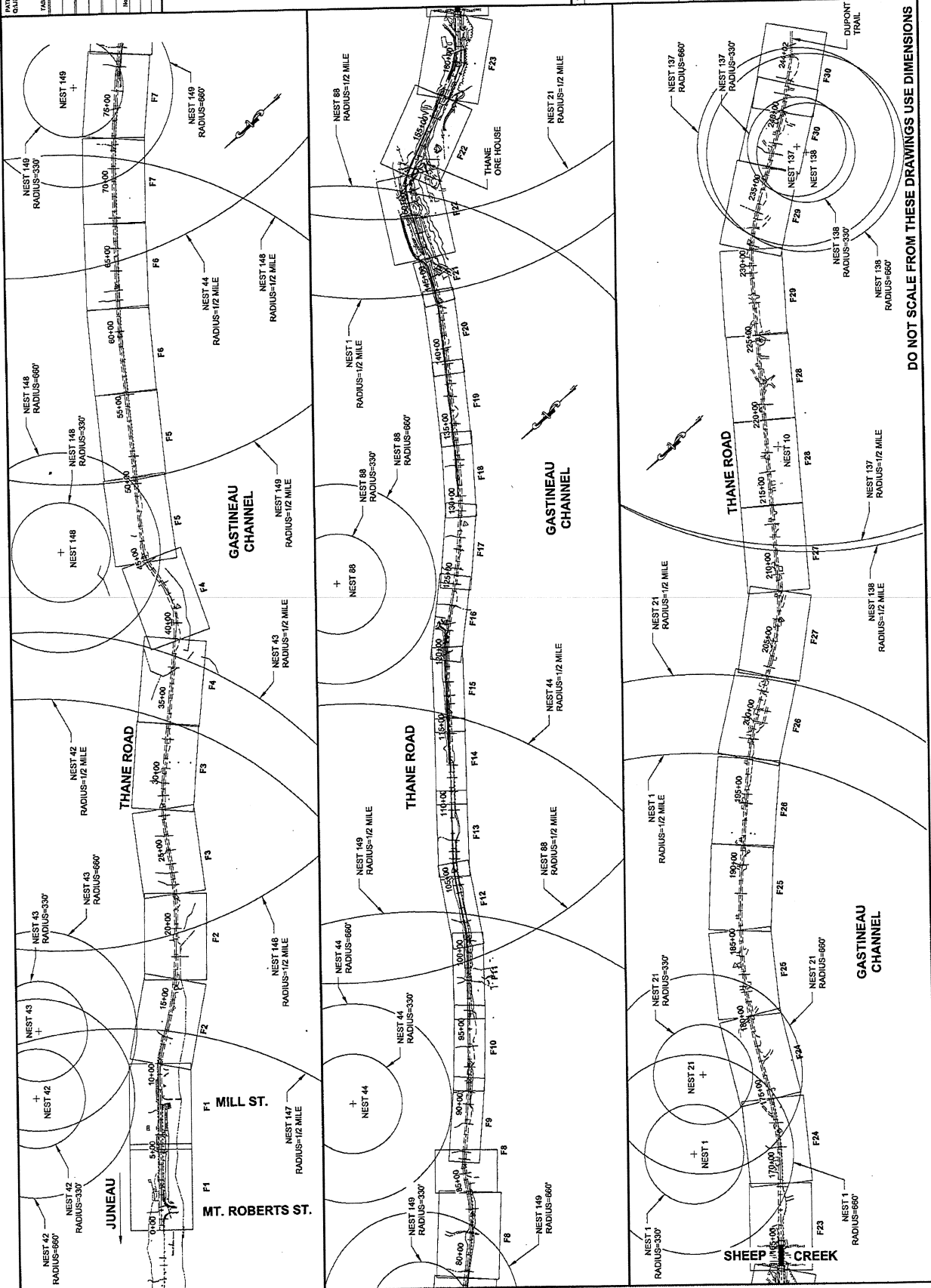
JNU  
THANE ROAD PAVEMENT  
REHABILITATION  
PBO IECT #60240  
SOUTHEAST REGION  
& PUBLIC FACILITIES

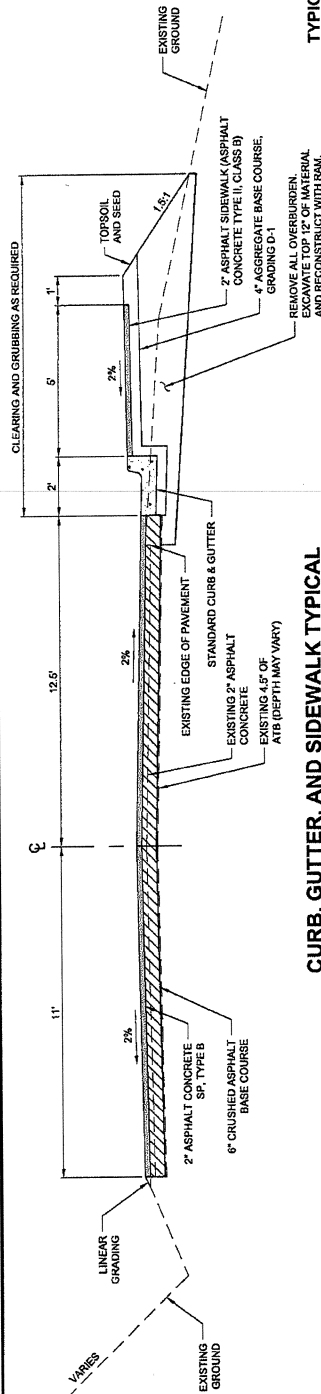
**I AVOIT**

LAYOUT
PROJECT DESIGNATION
69340

STATE	YEAR
ALASKA	2011
SHEET NUMBER	TOTAL SHEETS

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

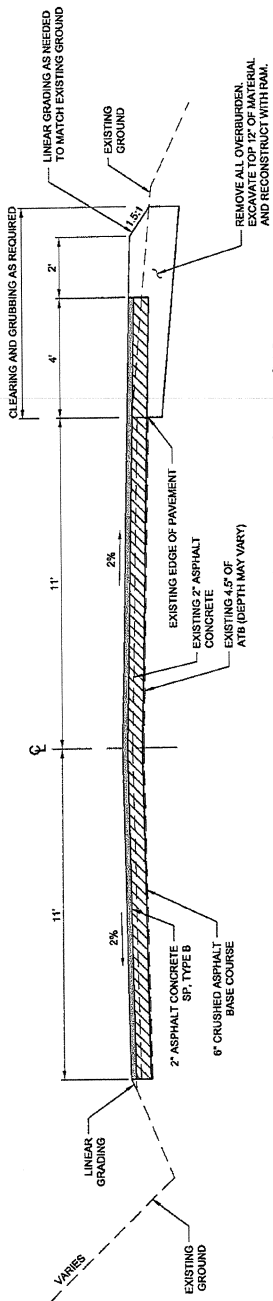




### CURB, GUTTER, AND SIDEWALK TYPICAL

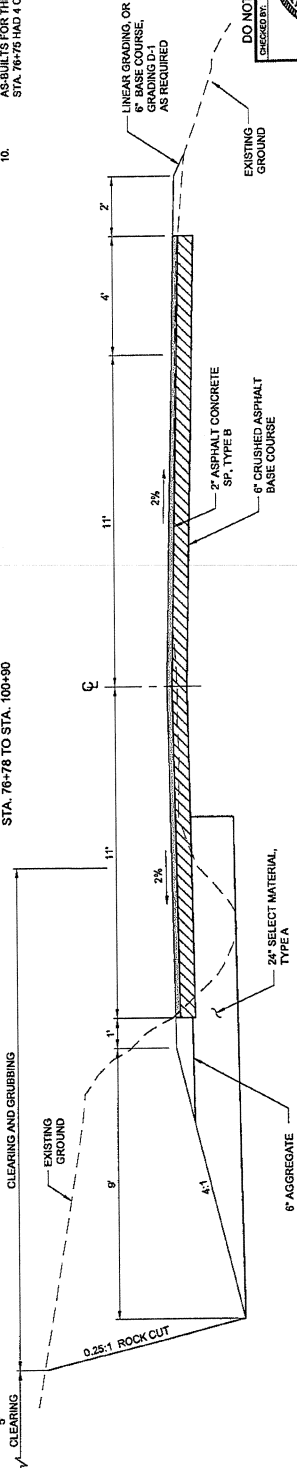
STA. 1145 TO STA. 7+90

NOTE: STA. 1145 TO STA. 3+92, SAWCUT ALONG FOG LINE TO CONSTRUCT CURB AND GUTTER. THE C&G AND ROADWAY PAVING WILL NOT BEGIN UNTIL STA. 3+92. SEE SHEET P1.



### RIGHT SHOULDER WIDENING TYPICAL

STA. 7+90 TO STA. 48+90  
STA. 76+78 TO STA. 100+90



### LEFT SHIFT TYPICAL

STA. 100+90 TO STA. 114+50

### TYPICAL SECTION NOTES:

1. CONSTRUCT SHOULDERS WITH RAM AS SHOWN PRIOR TO PULVERIZING ACTIVITIES IN ORDER TO CONSTRUCT THE SIDEWALK AND THE CRUSHED ASPHALT BASE COURSE (C&G) FULL WIDTH OF ROADWAY.
2. SHOULDER EXCAVATION IS ANTICIPATED TO BE A DEPTH OF 12". THE ENGINEER MAY INCREASE OR DECREASE THE DEPTH OF EXCAVATION TO A SUITABLE FOUNDATION MATERIAL.
3. PULVERIZING DEPTH SHALL BE THE FULL DEPTH OF EXISTING PAVEMENT PER SECTION 308.
4. PULVERIZING TO CONSTRUCT C&G SHALL BE PAID FOR UNDER ITEM 308.
5. CONTRACTOR SHALL MAKE INITIAL PASS THEN ADD AGGREGATE FOR C&G, IF REQUIRED, TO MEET A SMOOTH AND UNIFORM GRADE. THE ENGINEER SHALL APPROVE GRADE. PRIOR TO MIXING OIL AND CEMENT IN SECOND PASS.
6. THE LIMITS OF PULVERIZING SHALL BE AS CLOSE TO THE FACE OF GUARDRAIL AS POSSIBLE. ACTUAL CRUSHED ASPHALT BASE COURSE LIMITS SHALL BE DETERMINED BY THE ENGINEER.
7. LINEAR GRADING SHALL CONSIST OF GRADING, SHAPING, AND COMPACTING THE CRUSHED ASPHALT BASE MATERIAL AS SHOWN ON THE TYPICAL SECTION. SEE SECTION 308 OF THE SPECIAL PROVISIONS.
8. DOT&PF IS MAKING ITS STOCKPILED RAM LOCATED AT THE INTERSECTION OF EGM AND MENDENHALL LOOP AVAILABLE FOR CONTRACTOR USE ON THE PROJECT.
9. WHERE ROCK EXCAVATION IS REQUIRED, FLUFF BLAST ROADWAY STRUCTURAL SECTION TO A DEPTH MATCHING THE DITCH BOTTOM TO FACILITATE DRAINAGE.
10. THE EXISTING PAVEMENT CONSISTS OF APPROXIMATELY 4.5" OF A.T.B. AND 2" OF ASPHALT. THE ACTUAL PAVEMENT DEPTH MAY BE GREATER AT LOCATIONS OF MAINTENANCE PATCHES.

AS-BUILT FOR THE PREVIOUSLY REHABILITATED SEGMENT BETWEEN STA. 48+90 TO STA. 76+78 HAD 4" CORES DRILLED TO DETERMINE EXISTING PAVEMENT THICKNESS.

EXISTING ASPHALT THICKNESS	
CORE	THICKNESS
1	6 3/4"
2	6 1/4" TO 6 1/2"
3	6 3/4"
4	6 3/4"

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS



JNU-THANE ROAD  
PAVEMENT REHABILITATION  
PROJECT #69340

### TYPICAL SECTION

CHECKED BY: D. LESTER	DATE: 10/14/10
DESIGNED BY: D. LESTER	DATE: 10/14/10
DRAWN BY: D. LESTER	DATE: 10/14/10
PATH: C:\JNU\JNU\PLAN\SET\69340.DWG	PROJECT DESCRIPTION: JNU-THANE ROAD PAVEMENT REHABILITATION PROJECT #69340
TAB: B1	YEAR: 2011
NO. 1	SHEET: B1
TOTAL: 1	XX