

MEMORANDUM

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

DATE: September 22, 2011

TO: Board of Adjustment

FROM: Teri Camery, Senior Planner
Community Development Department

FILE NO.: VAR20110011

PROPOSAL: A Variance to widen and straighten the roadway between the North Eagle Beach Kayak Launch and Bessie Creek within 330 feet of 10 eagle nests, including potential damage to 7 nests by fly rock from blasting.

GENERAL INFORMATION

Applicant: State of Alaska - DOT

Property Owner: State of Alaska - DOT

Property Address: Glacier Highway, a.k.a. Veterans Memorial Highway

Legal Description: Glacier Highway right-of-way

Site Size: Four (4) linear road miles

Zoning: Rural Reserve

Access: Glacier Highway

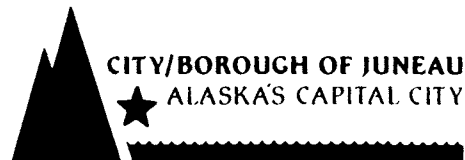
Existing Land Use: Glacier Highway right-of-way

Surrounding Land Use: North - Rural Reserve; public recreational use and approximately nine rural properties

South - Rural Reserve; public recreational use

East - Rural Reserve; public recreational use

West - Rural Reserve; public recreational use



ATTACHMENTS

Attachment 1	Vicinity Map
Attachment 2	Development Permit Application
Attachment 3	Variance Application
Attachment 4	Project Narrative
Attachment 5	9/13/11 Applicant email message
Attachment 6	Contract Amendment with \$500,000 bond for eagle impacts
Attachment 7	Site Plans
Attachment 8	Nests with 330-foot boundary on aerial photographs
Attachment 9	Applicant Eagle Permit Applications to U.S. Fish and Wildlife Service
Attachment 10	9/9/11 Applicant email message and 8/29/11 DRAFT U.S. Fish and Wildlife Service Eagle Permit Conditions
Attachment 11	CSP2004-00006 South Tee Harbor to Bessie Creek Notice of Decision
Attachment 12	VAR2001-00017 Stablers Point Eagle Variance Notice of Decision and Monitoring Protocol
Attachment 13	VAR2008-00006 Stablers Point Eagle Variance Notice of Decision
Attachment 14	USFWS 9/21/11 Explanation of Take, Disturbance, and Fines

PROJECT DESCRIPTION

The applicant, DOT/PF, is proposing to widen and straighten a four-mile portion of roadway from the North Eagle Beach Kayak Launch (mile 29.5) to Bessie Creek (mile 33.6). Specifically, the project will widen the roadway by approximately six feet to 30 feet, including four-foot paved shoulders on both sides of the highway with 11-foot travel lanes. Drainage culverts and guardrails will be replaced to meet current standards.

The proposed development requires a Variance because construction would be within 330 feet of 10 eagle nests, as shown in Attachments 1, 7, and 8. 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;*

The applicant states that the following measures have been taken to minimize project impacts on the eagle nests:

1. The footprint of the proposed improvements is the minimum necessary to bring the highway to current safety standards.
2. The proposed road alignment makes only the minimum shifts to realign curvature to current safety standards.

The following table, taken from DOT/PF's application to the U.S. Fish and Wildlife Service (USFWS), documents activity within each of the 10 nests that are within 330 feet, and additional nests that are farther away. This table does not include 2011 information, which was not available at the time the application to USFWS was submitted.

Table 2 – Known Nest Information

Nest Number	Last known active year
96	2010
87	2010
52	2010
79	1996
104	2010
14A	2003
14	2010
91	2007
103	2010
77A	2003
105	2010
15	2010
57	2010
73	2010

Nest distances. The following chart lists the closest distance from each nest to the road centerline, as listed in DOT's application to USFWS. This distance does not reflect the actual distance from construction, which would be closer.

Nest Number	Distance from nest to road centerline
Nest 79	158 feet
Nest 14A	241 feet
Nest 104	123 feet
Nest 14	142 feet
Nest 91	232 feet
Nest 77A	182 feet
Nest 103	234 feet
Nest 77	235 feet
Nest 15	186 feet
Nest 57	252 feet

Construction Activity. In order to widen and straighten the roadway, blasting will be required for the full length of the project. Other construction activities include: clearing and grubbing, drilling for placement of explosives, excavation, loading and hauling rock, grade surfacing, paving and compacting the road surface, culvert replacement, guardrail post driving, and grinding and milling. These activities are described in the eagle permit application to USFWS (Attachment 9). Construction activities, including blasting, will occur throughout the year. Of the 10 nests within 330-feet of the road construction corridor, seven nests on the water side, where nest height nearly reaches the elevation of the road, are vulnerable to damage by fly-rock from blasting.

Project Timeline. DOT released bid documents for the project on September 15, 2011. A contractor has been selected and contract documents have been finalized. The project will be completed by November 1, 2013. The contract includes a \$500,000 bond for "take" of any live bald eagles (Attachment 6).

According to USFWS, the Bald and Golden Eagle Protection Act defines the "take" of an eagle to include a broad range of actions, including "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, or molest or disturb." Disturbance, listed under the definition of take, is further defined in federal regulations at 50 CFR 22.23 as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior."

The \$500,000 bond would be paid by the contractor to the State of Alaska to pay for penalties assessed against DOT/PF by USFWS. The bond would be enforced by DOT/PF. USFWS penalties under the eagle permit, which apply only to damage of inactive nests, are listed in the next section. These penalties do not include fines that may be issued under the Bald Eagle Protection Act, which could reach \$250,000-\$500,000 for damage to active nests. More information on USFWS definitions and fines is provided in Attachment 14.

USFWS Draft Permit Conditions. The applicant has applied for two eagle permit applications from USFWS, included in Attachment 9, for "take" (which includes disturbance) of up to 11 eleven eagle nests along the project route (The application to USFWS refers to 11 nests instead of 10, because one nest is within 660 feet, but not within 330 feet and therefore not subject to CBJ regulation). USFWS Eagle Permits are described in the Background section of this report. One of DOT's eagle permit applications would allow for "take" of **inactive** nests, whether those nests are inactive during the inactive nesting period (typically September 1 through February 28 or 29), or whether the nests are inactive (not being used) during the active nesting period, which is typically March 1 through August 31. This specifically applies to the seven nests that are vulnerable to damage from fly-rock from blasting. The "take" permit would not authorize damage to nests that are **active**. The other application would allow for "disturbance" of all eleven nests along the project route, whether those nests are active or inactive.

USFWS has not yet issued the eagle permits. The USFWS Region 7 Eagle Permit Biologist has

specifically stated:

“It is important to remember that these are draft conditions only and provided, at the request of ADOT, as a guiding document for CBJ and should not be construed as final. As clarified in an earlier e-mail (dated 8/29) "These conditions are subject to change prior to issuance as a consequence of further review by the USFWS and/or tribal consultations." The conditions have not yet been reviewed by the USFWS Eagle Permit Committee, AKDF&G, or concerned tribes. Consequently, they are subject to change.”

The USFWS Draft Conditions include, in part, the following:

- 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.
- For every high quality nest (nests #12, 103, 15, or 57) taken, Alaska Department of Transportation shall donate \$15,000 dollars to the Conservation Fund. Funds shall be donated by December 31 of the year in which the take occurred.
- For every medium quality nest (nests #79, 14A, or 77) taken, Alaska Department of Transportation shall donate \$5,000 to the Conservation Fun. Funds shall be donated by December 31 of the year in which the take occurred.
- Annual monitoring of nests, including nest surveys to determine active/inactive status, and an annual report
- Permittees and sub-permittees 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 permit its, or other authorizations, if required. (Attachment 10)

USFWS has emphasized in phone and email communication that the permit would not authorize “take” of active nests. The fines listed above apply only to “take” of inactive nests. Wounding or killing eagles or eaglets would still be subject to prosecution under the Federal Bald Eagle Protection Act. Fines for killing or wounding a single eagle range from \$250,000 to \$500,000. Attachment 14 provides more information on what is covered under the eagle permit vs. the Eagle Protection Act.

Commissioners may notice that the numbers for the “high quality” and “medium quality” nests do not match the chart provided by DOT. USFWS said in a phone conversation that this is because the draft conditions were released hurriedly to meet DOT’s request, and emphasized again that conditions are subject to change.

USFWS has also explained in phone conversations that eagle monitoring is typically a permit requirement. However federal eagle permit regulations do not have any professional standards for eagle monitors, or any requirement that eagle monitors must be an independent third-party. This is a significant departure from USFWS eagle reviews before the new permitting system, which will be discussed in the Analysis section of this report.

BACKGROUND

CSP Review. The project was approved under CSP2004-0006 on June 8, 2004 as part of 11 miles of trail and road reconstruction from South Tee Harbor to Bessie Creek. The CSP Notice of Decision is included in Attachment 12.

USFWS Eagle Permit. 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 and subsequent prosecution 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, though technically disturbance is a form of take, and the definitions overlap in many confusing ways. (See definitions in the previous section.) However USFWS emphasizes that the eagle permit never authorizes kill or wounding of an eagle or chicks except in extreme cases that threaten loss of life or property. DOT's project does not qualify as an extreme case. See Attachment 14 for more information.

CBJ has typically relied on local USFWS expertise to evaluate variances to the eagle tree setback. 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.

As noted earlier, DOT/PF has not obtained a final USFWS eagle permit for the disturbance of 11 eagle nests; however draft conditions have been issued (Attachment 10).

ANALYSIS

In Southeast Alaska, the nesting season begins on March 1 when eagles choose and actively build a nest. Eagles begin laying eggs in early April with a peak in early May. Eggs typically hatch by June 1. The first two weeks after hatching are the most important to the eaglets. The adults must vigorously feed them and remain at the nest to provide warmth until the eaglets are able to maintain their own body temperature. Mid-June through mid-July is the most secure and least sensitive period for the eaglets. After mid-July, if disturbed, eaglets may tumble out of the nest before they are able to fly. By mid to late July, most eaglets have fledged, and most fly to new areas by mid-August through early September. This information comes from USFWS National Bald Eagle Management Guidelines, (May 2007) and past discussions with USFWS staff. USFWS considers March 1 through August 31 as the active nesting period. It's important to note that it's impossible to determine which nests will become active when evaluating nest activity early in the season. Active nests cannot be conclusively determined until approximately May.

In previous eagle variance reviews, CBJ has typically restricted heavy equipment use to months outside of the active nesting period. For example, for eagle tree variances regarding construction of single-family homes and other residential developments, CBJ has restricted use of heavy machinery and tree-felling to the time period before March 1 or after August 31. For eagle variances regarding trail construction, CBJ has restricted all use of motorized equipment and tree-felling to the time period before March 1 or after August 31.

Greater flexibility has been allowed in unusual cases where eagles are highly habituated to noise, such as Stablers Point. However even in the case of Stablers Point, where eagles have been observed nesting within 50 feet of blasting areas, CBJ eagle variances have prohibited both heavy equipment use and blasting from March 1 through May 31 (see Notices of Decision, Attachment 12 and 13). No evidence has been presented indicating that eagles nesting in the relatively remote Glacier Highway project area are desensitized to noise, particularly heavy construction impacts such as blasting.

USFWS has also typically required greater restrictions on eagle permits. For example, a condition on an eagle permit issued earlier this year for road rehabilitation restricted vegetation removal within 330 feet of nests. This project did not require blasting and impacted fewer eagle nests, yet the conditions of USFWS appear to be stricter. In the 2001 and 2008 Stablers Point reviews, before the USFWS began their new permitting system, USFWS recommended restrictions on blasting and required extensive eagle monitoring by a qualified biologist (Attachments 12 and 13). As noted earlier, USFWS no longer has any minimum qualifications for eagle monitors in the eagle permit regulations.

Of the 10 nests within 330-feet of the road construction corridor, seven nests on the water side, where nest height nearly reaches the elevation of the road, are vulnerable to damage by fly-rock from blasting. The applicant states that it is not feasible to contain fly-rock in this area with matting because the surface is nearly vertical (Attachment 11, page 2). The applicant's primary measure to prevent damage from fly-rock is through the \$500,000 bond posted to the Contractor (Attachment 6), which would be enforced by DOT/PF and used to pay potential fines issued by USFWS.

The CBJ Variance process does not allow for damage to eagle nests, active or inactive, through establishment of a bond or by payment of fines, either to CBJ itself or to another agency or organization. Under the new eagle permit, USFWS eagle protection standards appear to be substantially weaker than they used to be, though it's important to note that the USFWS Draft Permit Conditions are still under review and subject to change. However the CBJ standard in Code has not changed and CBJ seeks to be consistent with past reviews while considering the unique circumstances of each development.

The proposed project requires many loud and forceful heavy equipment activities, as described in the application. Staff believes it is not feasible or prudent to restrict all heavy equipment activity to time periods outside of the March 1 to August 31 active nesting period, which has been required in many or most eagle variance reviews, because widening and straightening the road is necessary for public safety. However as a condition of approval, staff recommends minimum restrictions consistent with

the Stablers Point reviews, as follows:

- 1) Blasting shall be prohibited within 330 feet of eagle nest trees from March 1 through May 31.
- 2) The applicant shall employ a qualified eagle monitor during the time period of June 1 through August 31, for purposes of monitoring active nests. Eagle Monitor qualifications are included in Attachment 12 under the attached Monitoring Protocol.
- 3) Blasting shall be prohibited within 330 feet of an eagle nest tree determined to be active by the U.S. Fish and Wildlife Service or a qualified eagle monitor, from June 1 through August 31.

Staff notes that these proposed conditions are substantially weaker than the Stablers Point conditions. Stablers Point prohibited all heavy equipment use, not just blasting, from March 1 through May 31, even though eagles in this area are known to be highly desensitized to noise. In the case of Stablers Point, this effectively shut down all project activity for an extended period of time.

In DOT's project, the proposed conditions would allow a broad range of other construction activity throughout the project route, while blasting would still be allowed in many sections of the route that are not within 330 feet of the eagle nests. The first condition would prohibit blasting during the time period when eagles are choosing their nests. The second condition would require a qualified eagle monitor to determine which nests have been chosen (e.g. which nests are active) and to monitor activity in those nests. The third and final condition would extend the blasting prohibition through August 31 only to eagle nests determined to be active by the eagle monitor. The conditions recommended by staff represent bare-minimum protections with the goal of minimizing damage to active nests.

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:

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- 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 provide substantial relief to the property owner, DOT/PF, to widen, straighten, and rehabilitate Glacier Highway consistent with current safety standards. A lesser relaxation, which would prohibit blasting impacts within 330-feet of eagle nests from March 1

through May 31, and from active nests from June 1 through August 31, would be consistent with justice to other property owners who have obtained eagle variances with conditions limiting heavy equipment use to timelines outside of the active nesting period. The proposed prohibition on blasting impacts is not nearly as strict as past variances, which have prohibited all heavy equipment use in this period. Staff believes this less restrictive approach is justified due to the public safety need for the project.

With acceptance of the proposed conditions which restrict blasting and require an eagle monitor, this condition 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, with acceptance of the proposed conditions which restrict blasting and require an eagle monitor, would allow construction to proceed within the proposed timeline while reducing the disturbance to eagles, in accordance with intent numbers 2, 3, 4, and 6.

With acceptance of the proposed conditions which restrict blasting and require an eagle monitor, this condition is met.

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

A grant of the Variance only affects blasting in relation to eagle nests. Injury to eagle nests is addressed under other Variance criteria. Construction within the 330-foot 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, from widening and straightening Glacier Highway to current safety standards. However highway maintenance is not technically considered a permissible principal use in any zoning district; it is an accessory use.

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 widening and straightening Glacier Highway to meet current safety standards. If DOT was held to complete compliance with no construction activity within 330-feet of the eleven eagle nests, the work could not be completed. Comparing the Glacier Highway 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;*

The roadway sections with eagle nests do not have physical features unique to CBJ or to the Glacier Highway area.

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 Glacier Highway right-of-way.

This sub-criterion is not met.

Criterion 5 is met because sub-criterion 5(B) 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 DOT/PF to widen and straighten Glacier Highway to meet current safety standards, which would provide benefit to the neighborhood. The Variance would result in heavy construction activity with 330-feet of 10 eagle nests throughout the year for two years, which would be significantly detrimental to eagle nesting activity. With acceptance of the proposed conditions which restrict blasting and require an eagle monitor, the worst of this detrimental heavy construction activity would be reduced, and a grant of the Variance could result in more benefits than detriments to the neighborhood.

With acceptance of the proposed conditions which restrict blasting and require an eagle monitor, this condition is met.

FINDINGS

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

Yes. We find the application contains the information necessary to conduct full review of the proposed operations. The application submittal by the applicant, including the appropriate fees, substantially conforms to the requirements of CBJ Chapter 49.15.

Per CBJ §49.70.900 (b)(3), General Provisions, the Director makes the following Juneau Coastal Management Program consistency determination:

2. *Will the proposed development comply with the Juneau Coastal Management Programs?*

Not applicable. Code section 49.70.310(a)(2), which prohibits development within 330-feet of an eagle nest on public land, is not part of the Juneau Coastal Management Program.

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

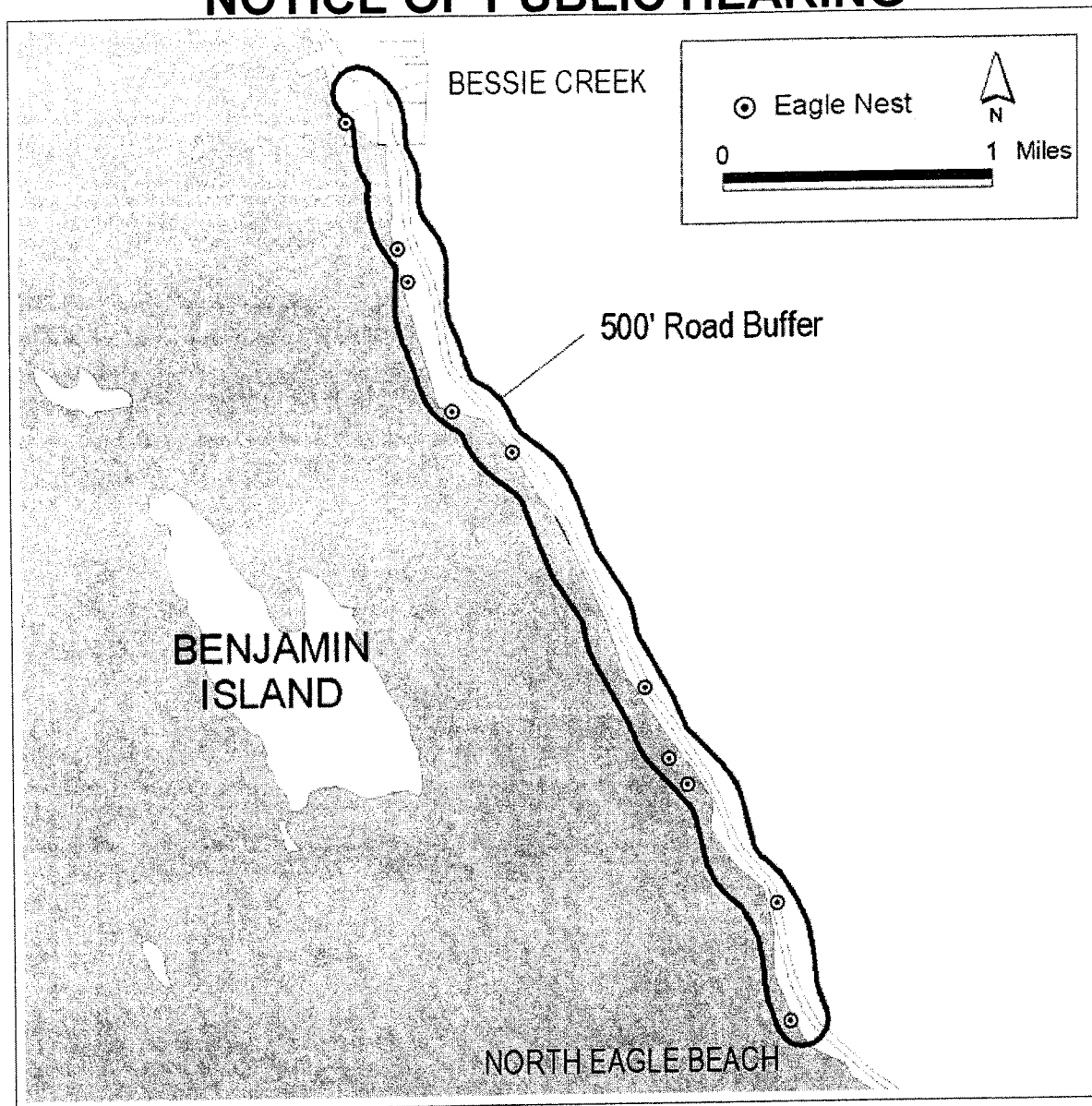
The Variance meets criteria 3, 4, and 5B. With acceptance of the proposed conditions which restrict blasting and require an eagle monitor, the Variance would also meet criteria, 1, 2, and 6.

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and grant the requested Variance, which would allow road construction activity within 330-feet of 11 eagle nests on Glacier Highway between approximately mile 29.5 and mile 33.6, with the following condition:

- 1) Blasting shall be prohibited within 330 feet of eagle nest trees from March 1 through May 31.
 - 2) The applicant shall employ a qualified eagle monitor during the time period of June 1 through August 31, for purposes of monitoring active nests. Eagle Monitor qualifications are included in Attachment 12 under the attached Monitoring Protocol.
 - 3) Blasting shall be prohibited within 330 feet of an eagle nest tree determined to be active by the U.S. Fish and Wildlife Service or a qualified eagle monitor, from June 1 through August 31.
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NOTICE OF PUBLIC HEARING



ATTACHMENT 1

PROPOSAL: A Variance to widen and straighten the roadway between North Eagle Beach Kayak Launch and Bessie Creek within 330 feet of 11 eagle nests, including potential damage to 7 nests by fly rock from blasting.

FILE NO.:	VAR20110011	APPLICANT:	State of Alaska DOT/PF
TO:	All Adjacent Property Owners	PROPERTY OWNER:	State of Alaska DOT/PF
HEARING DATE:	September 27, 2011	PROPERTY ADDRESS:	N. Eagle Beach Kayak Launch to Bessie Creek
HEARING TIME:	7:00 PM	SITE SIZE:	3.88 miles (20,462 ft)
PLACE:	ASSEMBLY CHAMBERS Municipal Building 155 South Seward Street Juneau, Alaska 99801	ACCESS:	Glacier Hwy

PROPERTY OWNERS PLEASE NOTE:

You are invited to attend this Public Hearing and present oral testimony. The Planning Commission will also consider written testimony. You are encouraged to submit written material to the Community Development Department no later than 8:30 A.M. on the Wednesday preceding the Public Hearing. Materials received by this deadline are included in the information packet given to the Planning Commission a few days before the Public Hearing. Written material received after the deadline will be provided to the Planning Commission at the Public Hearing.

If you have questions, please contact Teri Camery at 586-0755, or e-mail: teri_camery@ci.juneau.ak.us

Date printed: September 15, 2011

DEVELOPMENT PERMIT APPLICATION

Project Number	CITY and BOROUGH of JUNEAU	Date Received: <u>VAR 2011 5/9/11</u>
Project Name (City Staff to Assign Name)		

INFORMATION

Project Description
Widen the roadway 6' with 4' paved shoulders on both sides of Glacier Hwy keeping vehicle lanes 11', between N. Eagle Beach Launch Ramp + Bessie Creek

PROPERTY LOCATION

Street Address Glacier Hwy City/Zip Juneau
 Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)
Glacier Hwy between the Kayak Launch Ramp + Bessie Creek
 Assessor's Parcel Number(s) 0

LANDOWNER/ LESSEE

Property Owner's Name State of Alaska DOT Contact Person: Thomas Fagnant Work Phone: 907 465-1820
 Mailing Address 6860 Glacier Hwy Home Phone: 907 Fax Number: 465-3506
 E-mail Address tfagnant@alaska.gov Other Contact Phone Number(s):

LANDOWNER/ LESSEE CONSENT

Required for Planning Permits, not needed on Building/ Engineering Permits
 I am (we are) the owner(s) or lessee(s) 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.

X [Signature] 5/9/11
 Landowner/Lessee Signature Date
 X _____
 Landowner/Lessee Signature Date

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 may visit the property before the scheduled public hearing date.

APPLICANT

If the same as OWNER, write "SAME" and sign and date as below.
 Applicant's Name Same as above Contact Person: _____ Work Phone: _____
 Mailing Address _____ Home Phone: _____ Fax Number: _____
 E-mail Address _____ Other Contact Phone Number(s): _____

X [Signature] 5/9/11
 Applicant's Signature Date of Application

OFFICE USE ONLY BELOW THIS LINE

STAFF APPROVALS

Permit Type	Permit	Date Received	Application Number(s)
Building/Grading Permit			
City/State Project Review and City Land Action			
Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			
Mining Case (Small, Large, Rural, Extraction, Exploration)			
Sign Approval (If more than one, fill in all applicable permit #'s)			
Subdivision (Minor, Major, PUD, St. Vacation, St. Name Change)			
Use Approval (Allowable, Conditional, Cottage Housing, Mobile Home Parks, Accessory Apartment)			
✓ Variance Case (De Minimis and all other Variance case types)		<u>5/9/11</u>	<u>VAR 2011 0091</u>
Wetlands Permits			
Zone Change Application			
Other (Describe)			

***Public Notice Sign Form filled out and in the file.

Comments:

Permit Intake Initials

KK

VARIANCE APPLICATION

Project Number	Project Name (15 characters)	Case Number <u>VAR20110011</u>	Date Received <u>5/10/11</u>
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TYPE OF VARIANCE REQUESTED:

<input type="checkbox"/> Variance to the Sign Standard (VSG)	<input type="checkbox"/> Variance to Dimensional Standards (VDS)
<input checked="" type="checkbox"/> Variance to Habitat Setbacks (VHB)	<input type="checkbox"/> Variance to Parking Requirements (VPK)
<input type="checkbox"/> Variance to Setback Requirements (VSB)	

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:
The project will widen the roadway approximately 6 ft with 4-ft paved shoulders on both sides of the highway, and keep vehicle travel lanes at 11 ft. between the North Eagle Beach Kayak Launch and the Bessie Creek. Eagle trees exist within 330' of the project.

Previous Variance Applications? ☐ YES ☒ NO Date of Filing: _____

Previous Case Number(s): _____

Was the Variance Granted? ☐ YES ☐ NO

UNIQUE CHARACTERISTICS OF LAND OR BUILDING(S): _____

UTILITIES AVAILABLE: WATER: ☐ Public ☐ On Site SEWER: ☐ Public ☐ On Site

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?
There are eagle trees located within 330' of the project on Glacier Highway. We need to improve the highway to current standards for public safety.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?
The existing highway would retain substandard curvature and widths.

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 style="width: 100%;"> <tr> <th colspan="5" style="text-align: left;">VARIANCE FEES</th> </tr> <tr> <th></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> <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 style="text-align: center;"><u>1389</u></td> <td style="text-align: center;"><u>5/10/11</u></td> </tr> </table>	VARIANCE FEES						Fees	Check No.	Receipt	Date	Application Fees	\$ <u>400.00</u>	_____	_____	_____	Adjustment	\$ _____	_____	_____	_____	Total Fee	\$ <u>400.00</u>	_____	<u>1389</u>	<u>5/10/11</u>
VARIANCE FEES																										
	Fees	Check No.	Receipt	Date																						
Application Fees	\$ <u>400.00</u>	_____	_____	_____																						
Adjustment	\$ _____	_____	_____	_____																						
Total Fee	\$ <u>400.00</u>	_____	<u>1389</u>	<u>5/10/11</u>																						

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

*Design and Engineering Services – Southeast Region
Preconstruction - Preliminary Design & Environmental*

6860 GLACIER HIGHWAY
P.O. BOX 112506
JUNEAU, ALASKA 99811-2506
PHONE: (907) 465-~~4624~~ 1820
TEXT: (907) 465-4647
FAX: (907) 465-3506

May 8, 2011

Juneau Glacier Highway – North Eagle
Beach Kayak Launch to Bessie Creek
AKSAS # 67526

Subject: Eagle Tree Variance

City and Borough of Juneau
Attn: Community Development
155 S. Seward Street
Juneau, Alaska 99801

To Whom it May Concern:

The Alaska Department of Transportation and Public Facilities (DOT&PF) is developing plans and specifications to replace pavement, improve highway safety, and widen the paved portion to accommodate bicycles and pedestrians on Glacier Highway in Juneau, Alaska (Attachment 1, see sheet A6 and A7).

The project will widen the roadway approximately 6 ft with 4-ft. paved shoulders on both sides of the highway, and keep vehicle travel lanes at 11 ft. between the North Eagle Beach Kayak Launch and the Bessie Creek. Drainage culverts will be replaced in kind and in the same locations. The guardrails will be replaced to meet current standards. A drainage ditch will be constructed on the inland (eastern) side. The highway will be realigned to straighten curves for safety reasons and repave. New or repair existing will be installed guardrails.

There are nine eagle trees locations along the project (see attached). The USFWS has Bald and Golden Eagle regulations and a permitting process in place for "Take" and "Disturbance". The DOT&PF will be closely working with USFWS to develop the process for work inside the Primary Zone.

Construction would require operating within 330 feet of the eagle trees during the nesting season.

"Providing for the safe movement of people and goods and the delivery of state services"

ATTACHMENT 4

The DOT&PF is requesting a variance to CBJ 49.70.310 to operate within the 330' setback. We appreciate your consideration of this project and look forward to your concurrence.

If you have any questions or require additional project details, please call me at 465-1820 or email at thomas.fagnant@alaska.gov.

Sincerely,

Thomas Fagnant
Engineering Assistant III

Teri Camery

From: Scholl, James W (DOT) [jim.scholl@alaska.gov]
Sent: Tuesday, September 13, 2011 11:00 AM
To: Teri Camery
Cc: Greg Chaney
Subject: RE: application questions

Teri, We may be working in all months of the year. Rock excavation occurs along the entire project on the uphill side. Production blasting could occur (and most probably will) outside the active nesting season but there are always final grade shots that occur with a highway project of this nature. In other words a drainage ditch could have a rock knob extending into the design ditch line that may require a minor shot. Or a large boulder may need to be cracked in half for an excavator to pick it up and put it into a truck, etc.

Jim Scholl

Environmental Analyst
 ADOT&PF SE Region
 6860 Glacier Highway
 POB 112506
 Juneau Alaska 99811-2506

jim.scholl@alaska.gov

(907) 465 4498
 (907) 465 3506 FAX

From: Teri Camery [mailto:Teri_Camery@ci.juneau.ak.us]
Sent: Tuesday, September 13, 2011 9:59 AM
To: Scholl, James W (DOT)
Cc: Greg Chaney
Subject: RE: application questions

Hi Jim,

Thanks for your response. Regarding #1 below, please tell me what months of the year you will be working, and please explain why it is or is not possible to avoid construction, or to avoid blasting, in all or part of the active nesting period, which you described in your application as March 1 through August 31, with the most critical period being June 1 through August 31.

Thank you,
 Teri

Teri Camery, Senior Planner
 City and Borough of Juneau
 Community Development Department
 155 S. Seward
 Juneau, AK 99801
 (907) 586-0755 phone; (907) 586-3365 fax



Please consider the environment before printing this email.

From: Scholl, James W (DOT) [mailto:jim.scholl@alaska.gov]

ATTACHMENT 5

9/19/2011

Sent: Tuesday, September 13, 2011 9:17 AM
To: Teri Camery
Subject: RE: application questions

Teri, To answer your questions:

1. Bids were opened last Friday Sep 9th. We expect construction to begin by the end of this month. It is a two year project with construction to be complete by November 2014.
2. Distance from construction area to the 3 closest nests are: Nest 14 – 220', Nest 15 – 214', Nest 104 – 198'
3. DOT has taken measures to prevent flyrock. We have required the Contractor to post a \$500,000 bond to pay for fines and damages resulting from damages to eagle nests. We feel this is the best way to induce the Contractor to take prudent measures to limit damage from flyrock (e.g. limit the explosives). The difference between this project and the parking garage is that the working face of the rock is nearly always vertical making the use of mats less effective than in a horizontal application (like the parking garage).

I will send you A,B, & C ASAP.

Jim Scholl

Environmental Analyst
 ADOT&PF SE Region
 6860 Glacier Highway
 POB 112506
 Juneau Alaska 99811-2506

jim.scholl@alaska.gov

(907) 465 4498
 (907) 465 3506 FAX

From: Teri Camery [mailto:Teri_Camery@ci.juneau.ak.us]
Sent: Monday, September 12, 2011 6:23 PM
To: Scholl, James W (DOT)
Cc: Greg Chaney
Subject: application questions

Hello Jim,

I have three questions for you now to keep this process moving. I may have more questions after I speak with Jordan; after I receive Sections A, B, and C from you; and after I discuss the case further on Tuesday morning with Greg Chaney.

- 1) What is DOT's timeline for the project? Specifically, during which months will construction take place?
- 2) What is the distance from the construction area to the three closest nests: nest 14, nest 15, and nest 104?
- 3) Please explain why DOT is not taking measures to capture the flyrock from the blasting. (Construction of the downtown parking garage is an example of where this has been done.)

Please understand that we need a complete application by no later than 11 a.m. on Tuesday morning—including our time to review the materials—to put this project on the September 27 agenda, as I discussed with you in previous conversations. We do not have a complete application at this time.

Thank you for working with us and I look forward to receiving this information.

Cheers,

9/19/2011

F A X Transmittal

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
SOUTHEAST REGION DESIGN AND ENGINEERING SERVICES
6860 GLACIER HIGHWAY
P.O. BOX 112506
JUNEAU, ALASKA 99811-2506
TELEPHONE: (907) 465-4489
FAX: (907) 465-4238

TO ALL PROSPECTIVE BIDDERS AND OTHERS INTERESTED IN PROJECT NO
67526 / ACIM-093-3(28), JUNEAU-GLACIER HIGHWAY NORTH EAGLE BEACH KAYAK
LAUNCH TO BESSIE CREEK

ADDENDUM NO. ONE (1)

AUGUST 17, 2011

This transmittal consists of TWO (2) pages including this cover sheet. **If any pages are missing or clarification is needed, contact the Southeast Regional Contracts Office immediately.**

The Contract Documents are modified as follows:

Invitation to Bid (25D-7). NOTICE TO BIDDERS. Add "Quantity Calculation Notes" to the list of items available on the website.

The Specifications are modified as follows:

Section 107 Legal Relations and Responsibility to the Public, Subsection 107-1.02 Permits, Licenses, and Taxes. Under the list titled "The Contractor shall:" add the following item:

9. Furnish a bond or bonds totaling a value of \$500,000, payable to the State of Alaska prior to commencing work. The bond will be used to pay penalties assessed against the Department by the U.S. Fish and Wildlife Service if any of the following occur:

- a. There is a "take" of any live bald eagle(s), eggs, or young prior to issuance of the U.S. Fish and Wildlife Service Bald Eagle Permit. "Take" is defined in 50 CFR Part 22.3.
- b. There is a "take", other than disturbance, of any live bald eagle, eggs, or young. Disturbance must have been in accordance with the stipulations in the issued Permit.
- c. There is a "take" of any bald eagle nest, active or inactive.
- d. The Contractor fails to follow the Engineer's order to stop work given at the behest of the U.S. Fish and Wildlife Service.

Failure to obtain the specified bond under this item shall be grounds for withholding contract payments until bonding is obtained.

Section 651, Eagle Restrictions, Subsection 651-3.01 Eagle Disturbance Permit. Delete the last sentence of the first paragraph.

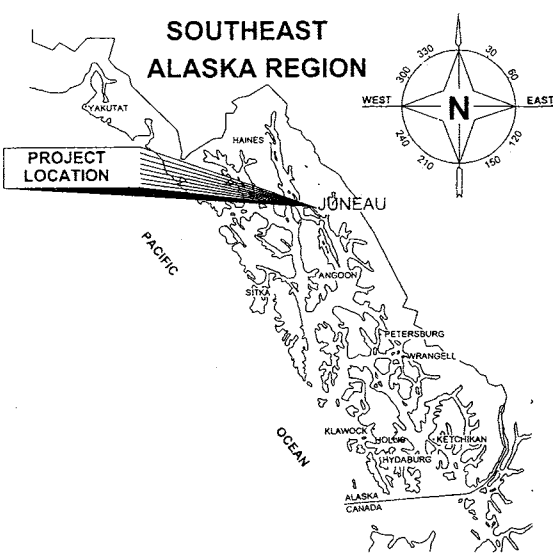
Delete the second paragraph and replace with the following: The Department is responsible for monitoring required by the permit.

Add the following to the third paragraph: "Take" is defined in 50 CFR Part 22.3.

State of Alaska
Department of Transportation
and Public Facilities
SOUTHEAST REGION

JUNEAU, ALASKA
GLACIER HIGHWAY

NORTH EAGLE BEACH KAYAK LAUNCH TO BESSIE CREEK
ACIM-093-3(28) ~ 67526



INDEX table with columns: SHEET NO., DESCRIPTION. Includes entries for Title Sheet, Survey Control, Alignment Data Sheet, etc.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

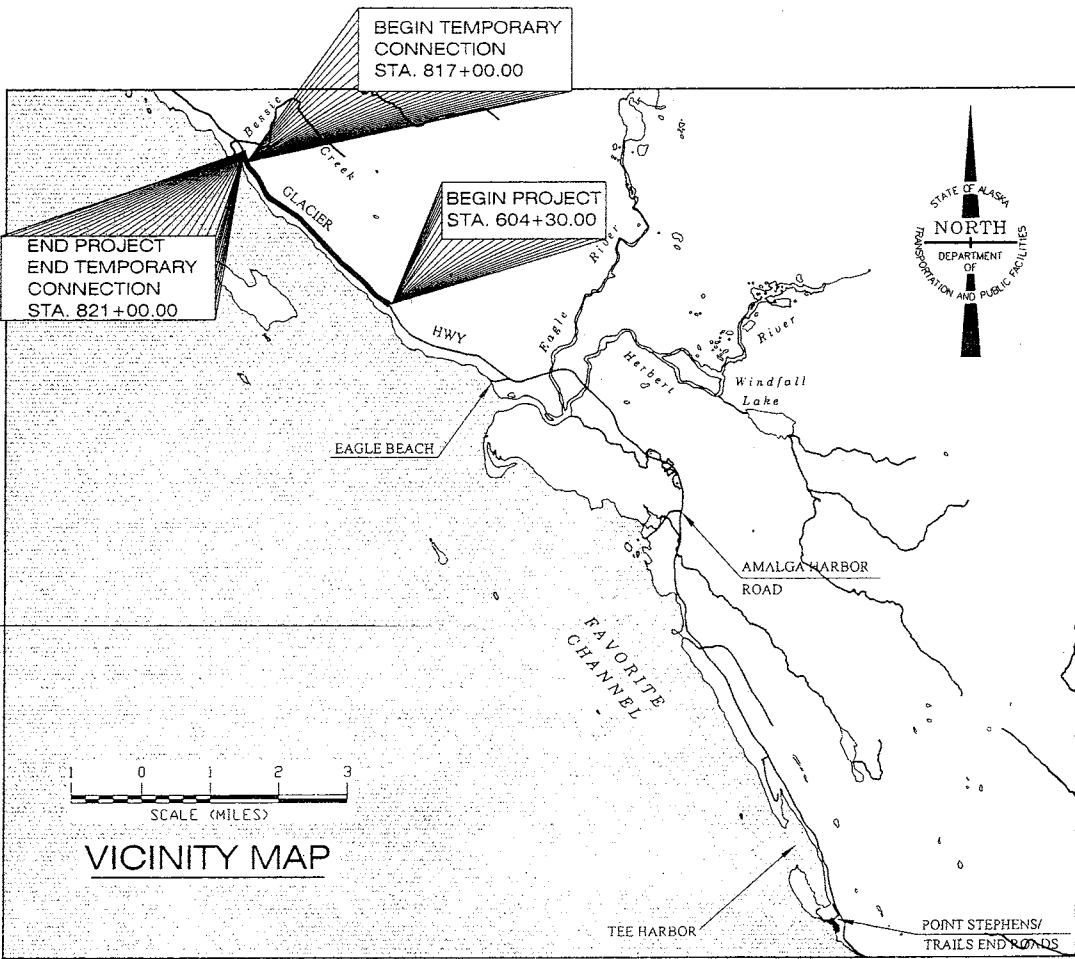
APPROVED: [Signature] 8/3/11
REGIONAL PRE-CONSTRUCTION ENGINEER
CHUCK CORREA, P.E.
DATE

APPROVED: [Signature] 8-3-2011
DIRECTOR, SOUTHEAST REGION
ALBERT H. CLOUGH, CPG
DATE

CERTIFIED TRUE & CORRECT AS-BUILT OF ACTUAL FIELD CONDITION:

CONSTRUCTION PROJECT MANAGER DATE

STATE PROJECT DESIGNATION YEAR SHEET NO. TOTAL SHEETS
ALASKA ACIM-093-3(28) ~ 67526 2011 A1 73



DESIGN DESIGNATION
B.O.P. (KAYAK LAUNCH) TO E.O.P. (BESSIE CREEK)

AVERAGE DAILY TRAFFIC	2010	2030
DESIGN HOURLY VOLUME (15%)	56	111
DESIGN SPEED (MPH)	55/50	55/50
PEAK HOURLY FACTOR	0.9	0.9
DIRECTIONAL DISTRIBUTION (ENTERING/LEAVING)	55/45	55/45
PERCENT TRUCK TRAFFIC	8.5%	8.5%
EQUIVALENT AXLE LOAD: 150,000		
TURNING VEHICLE: WB50		
VEHICLE LOADING: HL93		

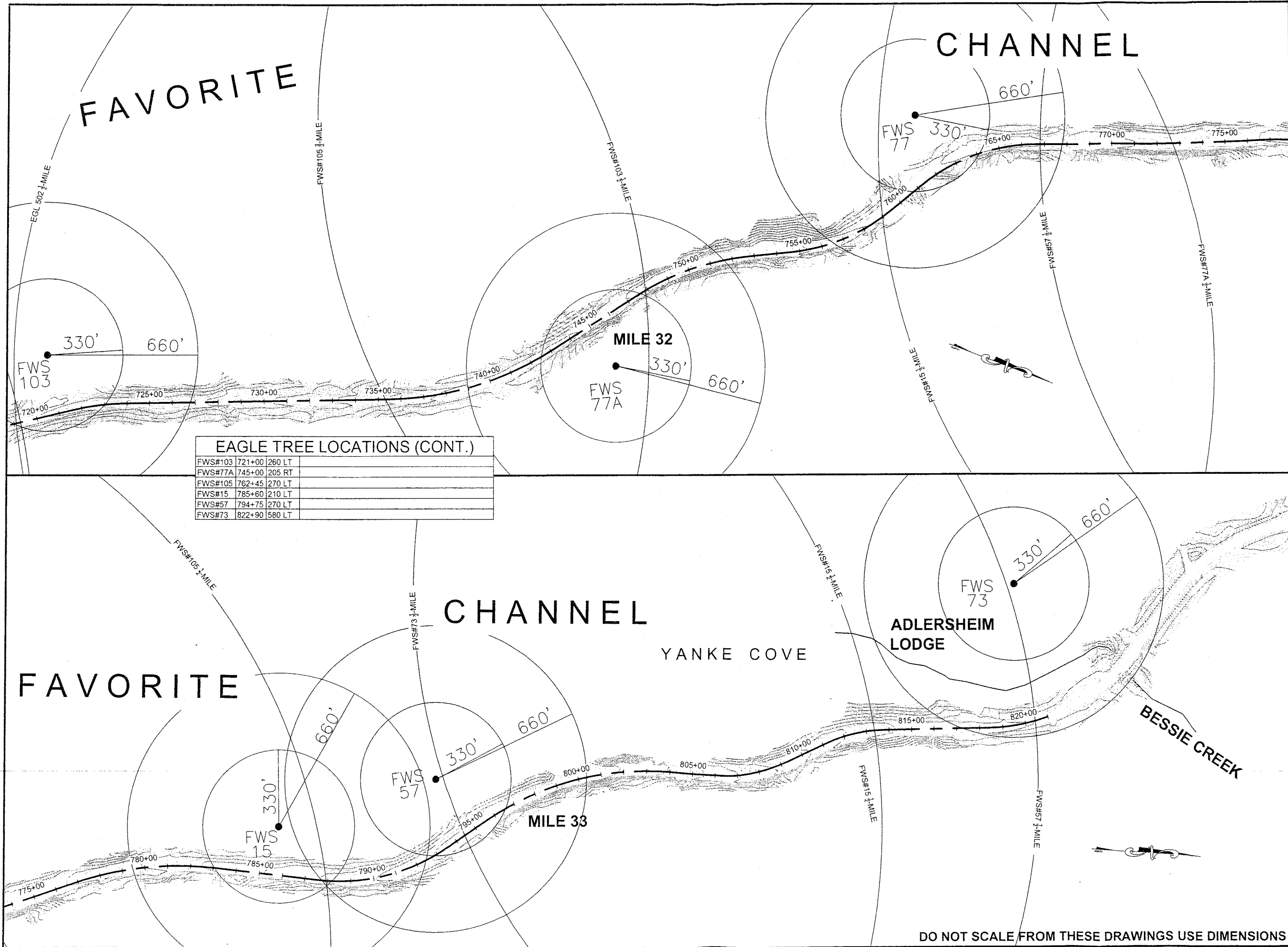
PROJECT SUMMARY

LENGTH OF GRADING	=	21,270 ft. (4.0 mi.)
LENGTH OF PAVING	=	21,270 ft. (4.0 mi.)
LENGTH OF TEMPORARY CONNECTIONS	=	400 ft.
WIDTH OF PAVING	=	30'
LENGTH OF PROJECT	=	21,670 ft. (4.1 mi.)

THE FOLLOWING STANDARD DRAWINGS APPLY TO THIS PROJECT:

A-1	E-13.00	G-28.00	S-05.01
C-04.12	G-00.01	I-81.00	S-20.10
D-01.02	G-04.06S	M-13.01	S-30.03
D-04.21	G-10.01	M-16.01	T-06.00
D-07.00	G-13.00	S-00.10	
E-09.00	G-20.10	S-01.00	

ATTACHMENT 7



EAGLE TREE LOCATIONS (CONT.)			
FWS#103	721+00	1260	LT
FWS#77A	745+00	205	RT
FWS#105	762+45	270	LT
FWS#15	785+60	210	LT
FWS#57	794+75	270	LT
FWS#73	822+90	580	LT

PATH: Q:\JUNU67526\PLANSET\TC3D
PLANSET67526 A6-A7 EAGLE TREES.DWG

WEAVER, JON M (DOT)

TAB: A7

ADDENDUM NUMBER

ATTACHMENT NUMBER

RECORD OF REVISIONS

No.	DATE	DESCRIPTION

BESSIE CREEK

THIS SHEET

FAVORITE CHANNEL

KAYAK LAUNCH

PLAN LEGEND

CHECKED BY: C. TRIPP

7-5-11

DESIGNED BY: J. WEAVER

DRAWN BY: J. WEAVER

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
& PUBLIC FACILITIES
SOUTHEAST REGION

GLACIER HIGHWAY
NORTH EAGLE BEACH KAYAK
LAUNCH TO BESSIE CREEK
PROJECT #67526

EAGLE TREE LOCATIONS

PROJECT DESIGNATION

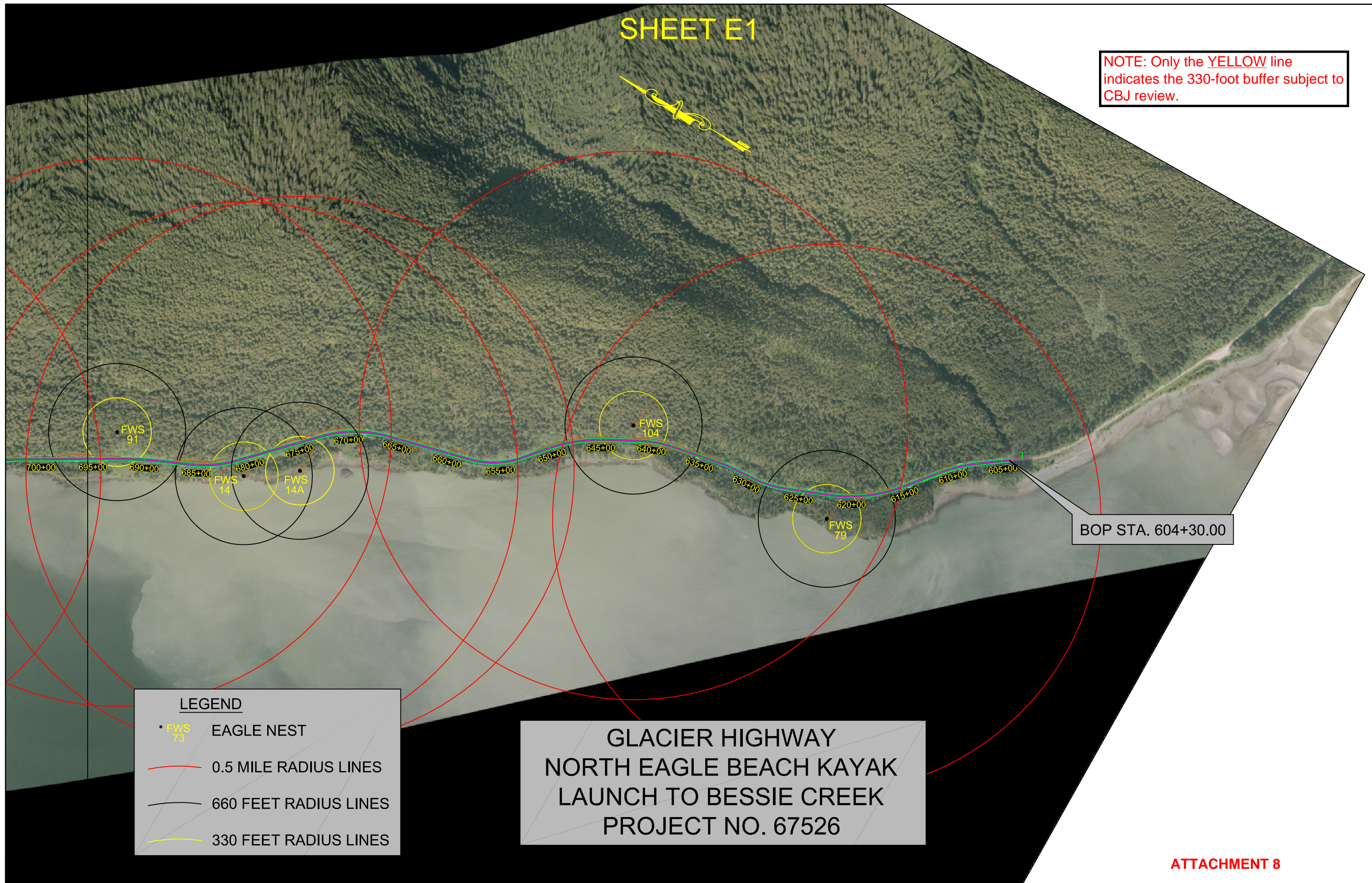
ACIM-093-3(28) ~ 67526

STATE	YEAR
ALASKA	2011
SHEET NUMBER	TOTAL SHEETS
A7	73

DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

SHEET E1

NOTE: Only the YELLOW line indicates the 330-foot buffer subject to CBJ review.

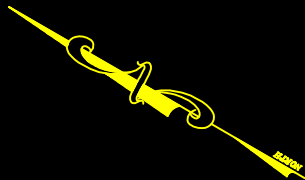


LEGEND

- FWS 73 EAGLE NEST
- 0.5 MILE RADIUS LINES
- 660 FEET RADIUS LINES
- 330 FEET RADIUS LINES





GLACIER HIGHWAY
NORTH EAGLE BEACH KAYAK
LAUNCH TO BESSIE CREEK
PROJECT NO. 67526

SHEET E2

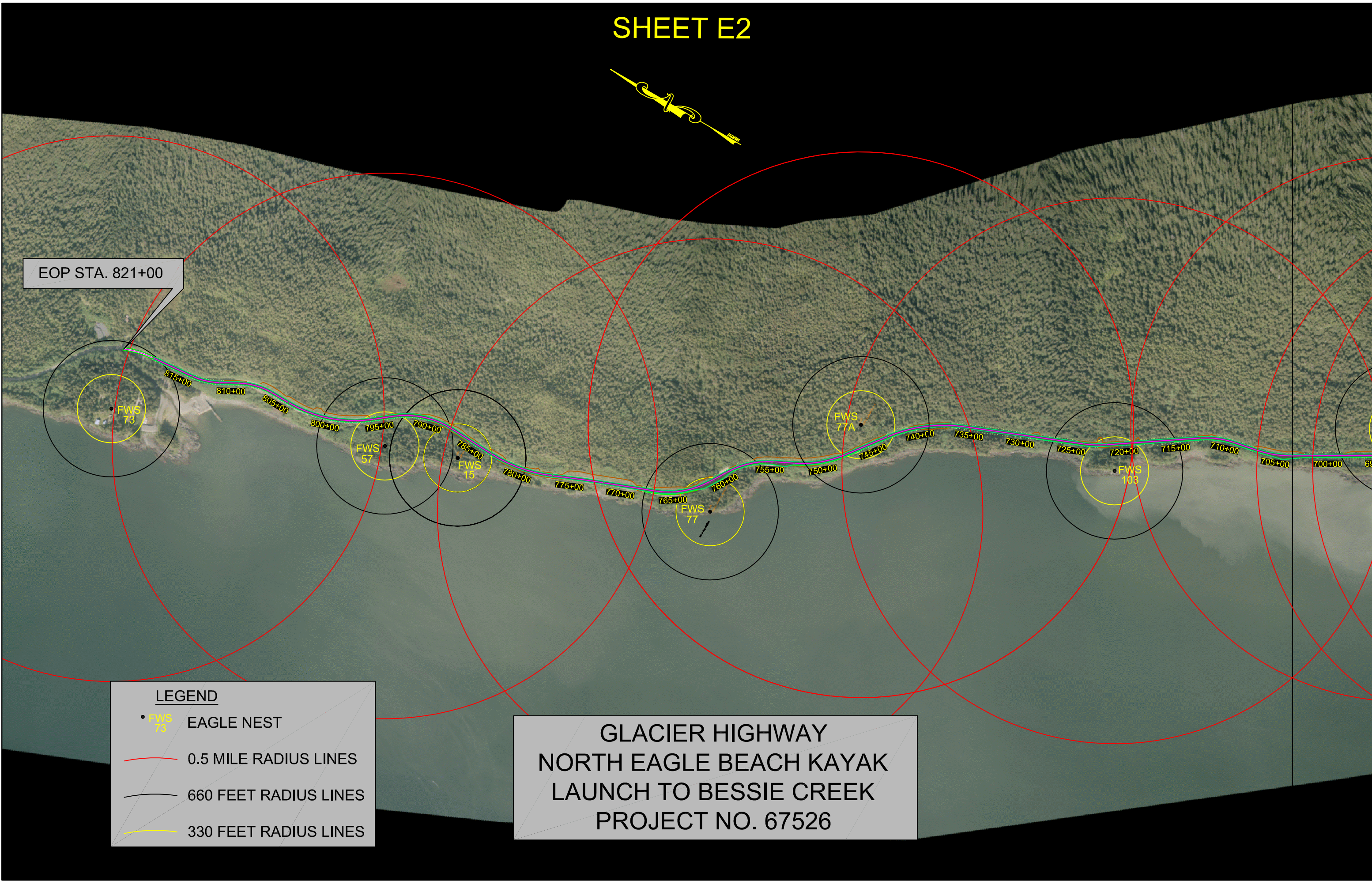


EOP STA. 821+00

LEGEND

-  EAGLE NEST
-  0.5 MILE RADIUS LINES
-  660 FEET RADIUS LINES
-  330 FEET RADIUS LINES

GLACIER HIGHWAY
NORTH EAGLE BEACH KAYAK
LAUNCH TO BESSIE CREEK
PROJECT NO. 67526





Department of the Interior
U.S. Fish and Wildlife Service
Federal Fish and Wildlife Permit Application Form

Expires 08/31/2012
OMB No. 1018-0136

Return to: Migratory Bird Permit Office
U.S. Fish and Wildlife Service

Type of Activity:
Eagle Nest Take

Complete section A or B, and sections C and D of this application. See attached Permit Application Instructions.

A. Complete if applying as an individual				
1.a. Last name:		1.b. First name:		1.c. Middle name or initial:
1.e. Doing business as (dba):		2.a. Mailing Address (line 1):		2.b. Mailing Address (line 2):
2.c. Mailing Address (line 3):		3.a. City:	3.b. County:	3.c. Province:
3.e. Zip code/postal code :		3.b. Country:	4. Date of birth (mm/dd/yyyy):	5. Social Security No:
6. Occupation:		7. List of any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by this permit:		
8. Home telephone number:	9. Work telephone number:	10. Fax number:	11. E-mail address:	

B. Complete if applying as a business, corporation, public agency or institution				
1.a. Name of business, agency, or institution: Alaska Department of Transportation		1.b. Doing business as (dba):		2. Tax identification no.: 92-6001185
3.a. Mailing address (line 1): POB 112506		3.b. Mailing address (line 2):		3.c. Mailing address (line 3):
4.a. City: Juneau	4.b. County		4.c. State: AK	4.d. Zip code: 99811-2506
5.a. Principal officer - Last name: Clough		5.b. First name: Albert		5.c. Middle name or initial
5.e. Principal officer title: Regional Director		6. Describe the type of business, agency, or institution and provide state of incorporation: State Transportation Agency		
7. Home telephone number:	8. Work telephone number: (907) 465-1762	9. Fax number: (907) 465-2030	10. E-mail address: al.clough@alaska.gov	

C All applicants complete	
1. Do you currently have or have you had any federal fish and wildlife permits? (For simplification, all licenses, permits, registrations, and certificates will be referred to as a permit.) Yes <input checked="" type="checkbox"/> If yes, list the number(s) of the most current permit you have held: MB43721A-0 No <input type="checkbox"/>	
2. Application fee: Enclose a check or money order payable to the U.S. Fish and Wildlife Service in the amount of \$500.00 (standard) or \$1,000 (programmatic) if you are applying for a new permit and \$150.00 (standard) or \$500 (programmatic) if you are requesting a substantive amendment of your existing valid permit. Federal, tribal, state, and local government agencies, and individuals and institutions acting on behalf of such agencies, are exempt from the application processing fee upon submission of a letter (on agency letterhead) certifying that the applicant is acting on behalf of the government agency (50 CFR 13.11(d)).	
3. Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of Chapter I of Title 50. I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001. Signature (in blue ink) of applicant/person responsible for permit. (No Photocopies or stamped signatures) <u>Reuben M. [Signature]</u> Date of signature (mm/dd/yyyy) <u>8/12/11</u>	

ATTACHMENT 9

D. EAGLE NEST TAKE (Eagle Act, 50 CFR 22.27)

An eagle nest take permit authorizes the removal of bald eagle or golden nests for human safety, the safety of eagles, or the public's welfare. Permits may be issued to individuals, agencies, businesses, and other organizations. Please read "What You Should Know About An Eagle Nest Take Permit" and the pertinent regulations at 50 CFR 22.27 before you sign and submit your application.

Provide the following information on a separate sheet of paper. Please be as specific as possible in your responses to the questions. Please do not send pages that are over 8.5"X11", videotapes, or DVDs. Except for immediate safety emergencies, we strongly recommend that you submit your application at least 60 days prior to the date that you need your permit, as required by 50 CFR 13.11(c).

1. A description of the situation that necessitates removal of the eagle nest(s), including:

(A) 1. The number of nests proposed to be taken;

2. Whether the nest(s) is a bald eagle or golden eagle nest; and

3. Whether the nest(s) is active or inactive. (An active nest may only be taken to alleviate an immediate safety emergency.)

(B) Is the nest take necessary to alleviate safety concerns? ☐ Yes ☐ No

1. If Yes, describe the safety emergency and why removal of the nest is necessary to alleviate it.

2. If No, Provide the following:

a. An explanation for why removal of the nest is necessary to protect the public's welfare. ("Necessary to protect the public's welfare" is defined in the implementing regulations at 50 CFR 22.26(a) as "needed in order to maintain society's well-being in matters of health, safety and order.")

b. A calculation of the bald eagle or golden eagle area nesting population, including an appropriately scaled map or plat showing the location of each eagle nest used to calculate the area nesting population unless the Service has sufficient data to independently calculate the area nesting population.

c. A description of the avoidance, minimization, and mitigation measures you will undertake to reduce take and offset the detrimental impact of the permitted activity.

(C) A description of the property, including maps and digital photographs that show the location of the nest in relation to buildings, infrastructure, and human activities;

(D) The location of the property, including latitude and longitude;

(E) The length of time for which the permit is requested, including beginning and ending dates; and

(F) A statement indicating the intended disposition of the nest, and if active, the nestlings or eggs.

2. You must retain records relating to the activities conducted under your permit for at least 5 years from the date of expiration of the permit. Please provide the address where these records will be kept.

3. Have you obtained all required state, federal or tribal government approval(s) to conduct the activity you propose?

Yes ☒ If yes, provide a copy of the approval(s).

Have applied ☐

Not required ☐

D. EAGLE TAKE (Eagle Act, 50 CFR 22.26)

1(A) Description of Activity

Background

Glacier Highway was designated Alaska Federal Highway #2 in the early 1900's. The Alaska Road Commission originally constructed the Highway between 1920 and 1925 with a 14' wide gravel road from Juneau to the Shrine of Saint Therese at milepost 22.6. By 1964, the road was widened and extended to Bessie Creek at Milepost 33.5. During the 1970's the road was widened to 24 feet and extended Echo Cove at Milepost 39.

In March 1993, the State of Alaska Department of Transportation completed a reconnaissance study for Glacier Highway recommending pavement rehabilitation and widening from 24 feet to 26 feet from the Shrine of Saint Therese to Echo Cove with improved guardrail shy distances and a flattened 50 mph curve at Eagle Beach.

In 2004, a Categorical Exclusion was approved for a reconstruction of the road from Pt. Stephens Road (MP 18.0) to Bessie Creek (MP 33.5). In 2006, DOT & PF completed Stage I of this project from Milepost 18.0 to Amalga Harbor located at Milepost 24.4. In 2009, construction began on Stage II, from Amalga Harbor (MP 24.4) to just past the Kayak Launch (MP 28.1) and was recently completed.

This project, the Glacier Highway Stage III project from MP 29.5 to MP 33.6, is a 4.1 mile stretch of rural arterial highway approximately 29 miles north of downtown Juneau. The project area is a narrow road with 11-foot lanes and no shoulders.

Proposed Action

The road surface will be rehabilitated and widened to 30 feet. Existing ditches will be reconstructed on the uphill side and cross drainage culverts replaced to accommodate the widened roadway. Super-elevation will be adjusted accordingly to meet current standards (6% maximum). Signs and pavement striping will be renewed. A number of substandard horizontal curves will be flattened. To make room for the improvements, rock slopes on the uphill side of the existing highway will be drilled and shot with explosives. The drill and shoot activity will be performed nearly the whole length of the highway.

There are 11 bald eagle nest trees within 660 feet of the project. 10 of those nests are within 330 feet of the project. This take permit application is for the inadvertent take of 7 inactive nests located downhill and within 330 feet of the project. Due to the steep topography there is little tree cover between the 7 nests and necessary rock blasting activity.

Included in this application is a project overview overlain on an aerial photograph showing the location of the 11 nests. The 7 known nests that may be inadvertently taken are nests 79, 14A, 14, 103, 77, 15 and, 57. This permit application covers those 7 nests only. The entire project could take two years; estimated to start September 15, 2011 and be completed by September 1, 2013.

This permit application is for inadvertent take from blasting activity during the two periods when when all nests are inactive between:

1. September 15, 2011 and February 29, 2012, and
2. September 1, 2012 and February 28, 2013

The following table lists the activities proposed within various distances of the 7 known nests. Dates and durations are estimates and could shift, somewhat, as construction activities progress.

Table 1 – Construction Activities in Vicinities of Nests

Nest	Activity within 330' radius	Activities within 660' radius	Activities from 660' to ½ mile
79 622+00	The closest distance between the nest and the road centerline of the proposed road is 158 feet. Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)
14A 675+50	The closest distance between the nest and the road centerline of the proposed road is 241 feet. Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)
14 680+85	The closest distance between the nest and the road centerline of the proposed road is 142 feet. Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)	Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)
103 721+00	The closest distance between the nest and the	Blasting between September 15, 2011 and February 29, 2012	Blasting between September 15, 2011 and February 29,

	<p>road centerline of the proposed road is 234 feet.</p> <p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>
77 762+45	<p>The closest distance between the nest and the road centerline of the proposed road is 235 feet.</p> <p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration))</p>
15 785+60	<p>The closest distance between the nest and the road centerline of the proposed road is 186 feet.</p> <p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>
57 794+75	<p>The closest distance between the nest and the road centerline of the proposed road is 252 feet.</p> <p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>	<p>Blasting between September 15, 2011 and February 29, 2012 and/or September 1, 2012 and February 28, 2013 (2 week duration)</p>

Description of the following construction activities that may disturb bald eagles are:

“Blasting” means placement and subsequent ignition of the explosive material in bedrock.

1(B). The species that are likely to be “taken” are Bald Eagles (*Haliaeetus leucocephalus*).

Any “take” would be unintentional and unavoidable. The “takes” are necessary to bring an existing road up to current Federal Highway Administration approved safety standards .

Refer to the project overview map. What is known about the 7 nests affected by the project is:

Table 2 – Known nest information

Nest Number	Last known active year	Tagged
79	1996	G737
14A	2003	?
14	2010	No
103	2010	No
77	2003	?
15	2010	No
57	2010	No

The likely form of the “take” could be from the blasting activity. Either:

- Fly rock could hit and damage a nest or
- Seismic vibrations generated by a shot could fracture soil and rock material underlying or adjacent to the nest trees damaging the trees.

The Glacier Highway is an existing road and the purpose of the project is to bring the existing road up to current safety standards. To avoid eagle nests, a new alignment for the road would have to be constructed inland from the existing road. A new alignment would use approximately 4.5 acres of forest outside of DOT&PF right of way. Avoidance would not be practicable.

Minimization measures are:

1. The footprint of the proposed improvements is the minimum necessary to provide a highway to current safety standards.
2. The proposed road alignment makes only the minimum shifts to realign curvature to current safety standards.

To mitigate for the inadvertent take of bald eagle nests the Contractor will be required to post a bond to pay for damages.

1(C) Maps of the bald eagle nests in relation to the project.

1. Eagle nest locations are shown on the attached project overview. The nest locations and radii relative to proposed road centerline are shown on the attached plan sheets. The distances between the existing road and the 7 eagle nests are given in Table 1.
2. Nest photos follow: (photos have been removed for the Planning Commission packet because they do not re-print well)

1(D) Project location

Refer to the attached project overview. The project lies in Sections 6, 7, 8, & 17, 20, 21, 28, 33, 34 T37S, R64E, CRM. See also USGS Quadrangle Map (attached). Approximate center of the project is 58°34'51.09N, 134°53'51.76W

1(E) Length of time for which the permit is requested

Construction is expected to start September 15, 2012 and be completed by September 1, 2014.

This permit application is for the period of time when all the project bald eagle nests are inactive, e.g.

1. September 15, 2011 and February 29, 2012, and
2. September 1, 2012 and February 28, 2013.

1(F) Disposition of nests

All nests are inactive during the times listed in 1(E). What is known about the 7 nests that may be affected by the project is given in table 2, item 1(B).

Other: Measures to offset the detrimental impact of the project

1. The footprint of the proposed improvements is the minimum necessary to provide a highway to current safety standards.
2. The proposed road alignment makes only the minimum shifts to realign curvature to current safety standards.
3. To mitigate for the inadvertent take of bald eagle nests the Contractor will be required to post a bond to pay for damages to eagle nests from blasting activities.

2. Where records will be retained

DOT&PF Southeast Region, 6860 Glacier Highway, POB 112506, Juneau AK 998011-2506

3. State, Federal, or Tribal approvals

Attached.



Department of the Interior
U.S. Fish and Wildlife Service
Federal Fish and Wildlife Permit Application Form

Expires 08/31/2012
OMB No. 1018-0136

Return to: Migratory Bird Permit Office
U.S. Fish and Wildlife Service

Type of Activity:
Eagle Take -- Necessary to Protect Interests in a Particular Locality

Complete section A or B, and sections C and D of this application. See attached Permit Application Instructions.

A. Complete if applying as an individual				
1.a. Last name:		1.b. First name:		1.c. Middle name or initial:
1.e. Doing business as (dba):		2.a. Mailing Address (line 1):		2.b. Mailing Address (line 2):
2.c. Mailing Address (line 3):		3.a. City:	3.b. County:	3.c. Province:
3.e. Zip code/postal code:		3.b. Country:	4. Date of birth (mm/dd/yyyy):	5. Social Security No:
6. Occupation:		7. List of any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by this permit:		
8. Home telephone number:	9. Work telephone number:	10. Fax number:	11. E-mail address:	

B. Complete if applying as a business, corporation, public agency or institution				
1.a. Name of business, agency, or institution: Alaska Department of Transportation		1.b. Doing business as (dba):		2. Tax identification no.: 92-6001185
3.a. Mailing address (line 1): POB 112506		3.b. Mailing address (line 2):		3.c. Mailing address (line 3):
4.a. City: Juneau	4.b. County:		4.c. State: AK	4.d. Zip code: 99811-2506
5.a. Principal officer - Last name: Clough		5.b. First name: Albert		5.c. Middle name or initial:
5.e. Principal officer title: Regional Director		6. Describe the type of business, agency, or institution and provide state of incorporation: State Transportation Agency		
7. Home telephone number:	8. Work telephone number: (907) 465-1762	9. Fax number: (907) 465-2030	10. E-mail address: al.clough@alaska.gov	

C All applicants complete	
1. Do you currently have or have you had any federal fish and wildlife permits? (For simplification, all licenses, permits, registrations, and certificates will be referred to as a permit.) Yes <input checked="" type="checkbox"/> If yes, list the number(s) of the most current permit you have held: MB43721A-0 No <input type="checkbox"/>	
2. Application fee: Enclose a check or money order payable to the U.S. Fish and Wildlife Service in the amount of \$500.00 (standard) or \$1,000 (programmatic) if you are applying for a new permit or \$150.00 (standard) or \$500 (programmatic) if you are requesting a substantive amendment of your existing valid permit. Federal, tribal, state, and local government agencies, and individuals and institutions acting on behalf of such agencies, are exempt from the application processing fee upon submission of a letter (on agency letterhead) certifying that the applicant is acting on behalf of the government agency (50 CFR 13.11(d)).	
3. Certification: I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in subchapter B of Chapter I of Title 50. I certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001. <div style="display: flex; justify-content: space-between;"><div>Signature (in blue ink) of applicant/person responsible for permit. (No Photocopies or stamped signatures)</div><div>Date of signature (mm/dd/yyyy) 8/12/11</div></div>	

D. EAGLE TAKE (Eagle Act, 50 CFR 22.26)

An eagle take permit authorizes the disturbance or other take of eagles where the take results from but is not the purpose of an otherwise lawful activity. Permits are available to individuals, agencies, businesses, and other organizations. This permit does not authorize possession of any eagle or eagle parts. Please read "What You Should Know About A Permit for Eagle Take Necessary to Protect Interests in a Particular Locality" and the pertinent regulations at 50 CFR 22.26 before you sign and submit your application.

Please be as specific as possible in your responses to the questions below. We strongly recommend that you submit your application at least 60 days prior to the date you need your permit, as required by 50 CFR 13.11(c).

Provide the following information on a separate sheet of paper. Please be as specific as possible in your responses to the questions. Please do not send pages that are over 8.5"x11", videotapes, or DVDs.

1. A description of your proposed activity that will likely take eagles, including:
 - (A) A detailed description of the activity that will likely cause the disturbance or other take of eagles;
 - (B) The species and number of eagles that are likely to be taken and the likely form of that take (e.g., disturbance, other take);
 - (C) Maps and digital photographs that depict the locations of the proposed activity, including the area where eagles are likely to be taken;
 - (D) For activities that are likely to disturb eagles (versus other take):
 1. Maps and digital photographs of the eagle nests, foraging areas, and concentration sites where eagles are likely to be disturbed by the proposed activity (including the geographic coordinates of the activity area and important eagle-use area(s) and the distance(s) between those areas);
 2. Whether or not the eagle use area is visible from the activity area, or if screening vegetation or topography blocks the view;
 3. The nature and extent of existing activities in the vicinity similar to that being proposed, and the distance between those activities and the important eagle use area(s);
 - (E) The date the activity will start and is projected to end;
 - (F) An explanation of what interests(s) in a particular locality will be protected by the take, including any anticipated benefits to the applicant or to the public;
 - (G) An explanation of why avoiding the take is not practicable, or for programmatic take, why it is unavoidable; and
 - (H) A description of measures proposed to offset the detrimental impact of the proposed activity on the regional eagle population.
2. You must retain records relating to the activities conducted under your permit for at least 5 years from the date of expiration of the permit. Please provide the address where these records will be kept.
3. Have you obtained all required state, federal or tribal government approval(s) to conduct the activity you propose?
☒ If yes, provide a copy of the approval(s). Have applied ☐ Not required ☐

D. EAGLE TAKE (Eagle Act, 50 CFR 22.26)

1(A) Description of Activity

Background

Glacier Highway was designated Alaska Federal Highway #2 in the early 1900's. The Alaska Road Commission originally constructed the Highway between 1920 and 1925 with a 14' wide gravel road from Juneau to the Shrine of Saint Therese at milepost 22.6. By 1964, the road was widened and extended to Bessie Creek at Milepost 33.5. During the 1970's the road was widened to 24 feet and extended Echo Cove at Milepost 39.

In March 1993, the State of Alaska Department of Transportation and Public Facilities (DOT&PF) completed a reconnaissance study for Glacier Highway recommending pavement rehabilitation and widening from 24 feet to 26 feet from the Shrine of Saint Therese to Echo Cove with improved guardrail shy distances and a flattened 50 mph curve at Eagle Beach.

In 2004, a Categorical Exclusion was approved for a reconstruction of the road from Pt. Stephens Road (MP 18.0) to Bessie Creek (MP 33.5). In 2006, DOT & PF completed Stage I of this project from Milepost 18.0 to Amalga Harbor located at Milepost 24.4. In 2009, construction began on Stage II, from Amalga Harbor (MP 24.4) to just past the Kayak Launch (MP 28.1) and was recently completed.

This project, the Glacier Highway Stage III project from approximately MP 29.5 to MP 33.6, is a 4.1 mile stretch of rural arterial highway beginning approximately 29 miles north of downtown Juneau. The project area is a narrow road with 11-foot lanes and no shoulders.

Proposed Action

The road surface will be rehabilitated and widened to 30 feet. Existing ditches will be reconstructed on the uphill side and cross drainage culverts replaced to accommodate the widened roadway. Super-elevation will be adjusted accordingly to meet current standards (6% maximum). Signs and pavement striping will be renewed. A number of substandard horizontal curves will be flattened. To make room for the improvements, rock slopes on the uphill side of the existing highway will be drilled and shot with explosives. The drill and shoot activity will be performed nearly the whole length of the highway.

There are 11 eagle trees within 660 feet of the project. This permit application is for the potential disturbance of the 11 eagle nests due to noise and vibration during construction activities. Included in this application is a project overview overlain on an aerial photograph showing the location of the 11 nests. The entire project could take two years; estimated to start September 15, 2011 and be completed by September 1, 2013.

The following table lists the activities proposed within various distances of the 11 known nests. Dates and durations are estimates and could shift, somewhat, as construction activities progress.

Table 1 – Construction Activities in Vicinities of Nests

Nest	Activity within 330' radius	Activities within 660' radius	Activities from 660' to ½ mile
79 622+00	<p>The closest distance between the nest and the proposed project is 158 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
104 641+90	<p>The closest distance between the nest and the proposed project is 123 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>from March 1, 2013 to Aug 1, 2013(2 day duration). Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
14A 675+50	<p>The closest distance between the nest and the proposed project is 241 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration). Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
14 680+85	<p>The closest distance between the nest and the proposed project is 142 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration). Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
91 692+65	<p>The closest distance between the nest and the proposed project is 232 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration). Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
103 721+00	<p>The closest distance between the nest and the proposed project is 234 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p> <p>Grind and mill from March</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
77A 745+00	<p>The closest distance between the nest and the proposed project is 182 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
77 762+45	<p>The closest distance between the nest and the proposed project is 235 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31, 2013 (3 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
15 785+60	<p>The closest distance between the nest and the proposed project is 186 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31,</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
57 794+75	<p>The closest distance between the nest and the proposed project is 252 feet.</p> <p>Clearing and grubbing Sep 1, 2011 to May 31, 2012</p> <p>Drill for blast from September 15, 2011 to May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Excavate and load excess material from October 1, 2011 to October 31, 2012 (3 day duration).</p> <p>Replace culvert from October 1, 2012 to Aug 31, 2012 (1 day duration).</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Ditch reconditioning from March 1, 2012 to Aug 31,</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (1 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p> <p>Haul and place fill from March 1, 2012 to Aug 1, 2013 (1 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

	<p>2013 (3 day duration).</p> <p>Grind and mill from March 1, 2012 to Aug 1, 2013 (2 day duration).</p> <p>Place and grade surface from March 1, 2013 to Aug 1, 2013(2 day duration).</p> <p>Pave and compact surface from May 1 to Aug 31, 2013 (1 week duration).</p> <p>Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).</p>		
73 822+90	<p>The closest distance between the nest and the proposed project is 577 feet.</p> <p>None</p>	Guardrail post driving from June 1, 2013 to Aug 31, 2013 (2 day duration).	<p>Drill for blast between September 15, 2011 and May 30, 2013 (2 week duration).</p> <p>Blast from September 15, 2011 to May 31, 2013. Numerous blasts, dates uncertain.</p>

Description of the following construction activities that may disturb bald eagles are:

“Clearing and grubbing” means removal of vegetative material by mechanical or hand methods. It includes falling of trees with a chainsaw and removal of organics. The removal material will be hauled to approved waste disposal areas.

“Drill for blast” includes mobilizing air powered rock drills and associated air compressors. Once in place the drills would drill holes in bedrock in a pattern that allows for placement of explosive material.

“Blast” means placement and subsequent ignition of the explosive material in bedrock. Includes minor rock blasts for ditch conditioning.

“Excavate and load excess material” means to remove material to the grades shown on the plans with an excavator and load into trucks for transport to approved waste disposal areas.

“Load and haul excess rock” means to load shot rock with a loader into rock trucks for transport to other project areas or to approved waste disposal areas.

“Haul and place fill” means to haul rock or aggregate in rock trucks or dump trucks and offload those materials. Once the materials are off they are spread and compacted using mechanical methods. Generally, the material is spread with a grader and compacted with a 10 ton vibratory roller.

“Place and grade surfacing” means to place processed soil materials to form a firm surface. Usually this involves offloading of material from dump trucks, spreading of material with a grader, and compacted with a 10 ton vibratory roller.

“Pave and compact surface” means to haul pavement in dump trucks, offload the pavement into a hopper, spread the pavement onto the roadway through a paver, and then compact the pavement without vibration. Pavement will be sawcut at start of work.

“Ditch reconditioning” means to clean and recondition the ditches with an excavator.

“Replace culvert” means to remove the pavement above a culvert, excavate to the existing culvert, remove the existing culvert, insert a new culvert, cover the new culvert, mechanically compact the new culvert, and pave over the existing surface.

“Guardrail post driving” means to drive guardrail posts into the ground a minimum of 8 feet.

“Grind and mill” means using a rotary type milling machine, capable of scarifying the existing roadway surface

1(B). The species that are likely to be “taken” are Bald Eagles (*Haliaeetus leucocephalu*).

Refer to the project overview map. What is known about the 11 nests affected by the project is:

Table 2 – Known nest information

Nest Number	Last known active year	Tagged
96	2010	No
87	2010	No
52	2010	No
79	1996	G737
104	2010	No
14A	2003	?
14	2010	No
91	2007	No
103	2010	No
77A	2003	?
105	2010	H810
15	2010	No
57	2010	No
73	2010	No

The likely form of the "take" is disturbance from loud construction noise and vibration. Noise and vibration would be different from various construction activities. The noise or vibration generated from the various activities would be:

- "Clearing and grubbing" would generate
 - High pitched intermittent noise from chainsaw activity
 - Scraping noise from material excavation.
- "Drill for blast" would generate loud engine noise from the air compressors. The air compressor usually is louder than the rock drilling operation.
- "Blast" would generate loud, short, intermittent noise each time explosives are ignited.
- "Excavate and load excess material" would generate:
 - Scraping noise from material excavation
 - Noise from material being loaded into truck.
- "Load and haul excess rock" would generate
 - Loud sharp noise when loading rock into rock trucks
- "Haul and place fill" would generate
 - Intermittent noise from dump trucks while loading and offloading materials,
 - Deep low pitched ground vibration from compaction operations
- "Place and grade surfacing" would generate
 - Intermittent noise from dump trucks while offloading materials,
 - Deep low pitched ground vibration from compaction operations
- "Pave and compact surface" would generate
 - Intermittent noise from dump trucks while offloading materials,
 - Deep low pitched ground vibration from compaction operations
- "Ditch reconditioning" would generate
 - Noise from excavator moving across roadway, and scraping in ditches
- "Replace culvert" would generate
 - Noise from excavation of culvert
 - Deep low pitched ground vibration from compaction operations
- "Guardrail post driving" would generate
 - Loud noise from machinery driving posts into ground
- "Grind and mill" would generate
 - Noise from machinery scarifying the existing roadway surface

1(C). Maps and photos of bald eagle nest locations

Eagle nest locations are shown on the attached project overview. The nest locations and radii relative to proposed road construction are shown on the attached plan sheets and project overview.

Nest photo's follow:

(Photos have been removed from the Planning Commission packet because they do not reprint well.)

1(D). Location and discussion of activities that are likely to disturb bald eagles:

1. Refer to the attached project overview and plan sheets. The distances from nests and road construction are shown as three concentric circles with the nest at the center. The circle radii are 330 feet, 660 feet, and ½ mile.

The project lies in Sections 6, 7, 8, & 17, 20, 21, 28, 33, 34 T37S, R64E, CRM. Approximate center of the project is 58°34'51.09"N, 134°53'51.76"W

2. Every eagle nest shown is in a heavily forested area screened by the trees from the road construction. The distances between the existing road and the 11 eagle nests are given in Table 1. Inadvertent take of inactive nests is addressed in a separate bald eagle nest take permit application.

The primary foraging area for bald eagles is coastal waters. The project is inland of 8 of the 11 nests. There will be construction activities between the 3 uphill nests (nos. 77A, 91, and 104)

3. There are no other similar proposed construction activities in the vicinity of the project.

1(E). Date of construction

Construction is expected to start September 15, 2011 and be completed by September 1, 2013.

1(F). Anticipated project benefits

This roadway serves as an important rural arterial linking Juneau's population centers with year-round recreational opportunities. It also serves as access to residential land and to various commercial interests including the Alaskan Native Goldbelt Corporation lands and the Kensington mine operations. The accident rate along parts of this segment of the highway exceeds the predicted rate.

1(G). Avoidance of potential nest disturbance during construction is not practicable:

The Glacier Highway is an existing road and the purpose of the project is to bring the existing road up to current safety standards. To avoid eagle nests, a new alignment for the road would have to be constructed inland from the existing road. A new alignment would use approximately 4.5 acres of forest outside of DOT&PF right of way. Avoidance would not be practicable.

1(H). Measures to offset the detrimental impact of the project

1. The footprint of the proposed improvements is the minimum necessary to provide a highway to current safety standards.
2. The proposed road alignment makes only the minimum shifts to realign curvature to current safety standards.
3. To mitigate for the inadvertent take of bald eagle nests the Contractor will be required to post a bond to pay for damages to eagle nests from blasting activities.

2. Where records will be retained

DOT&PF Southeast Region, 6860 Glacier Highway, POB 112506, Juneau AK 998011-2506

3. State, Federal, or Tribal approvals

Attached.

Teri Camery

From: Scholl, James W (DOT) [jim.scholl@alaska.gov]
Sent: Friday, September 09, 2011 2:34 PM
To: Teri Camery
Subject: FW: 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie Creek Safety Improvements / VAR 2011 0011

Attachments: Draft Permit Conditions 8-29-2011 .docx

Teri, Thanks for getting our variance application on the next agenda. Below is the e-mail string with US Fish and Wildlife Service (FWS) documenting coordination and giving us draft special conditions prior to permit issuance. DOT&PF's only comment is nest #12 needs to be deleted. It is not part of the application since it is greater than ½ mile from the project. I've discussed this with FWS and they agree. You can confirm with the FWS permitting agent, Jordan Muir.

As we discussed, we have applied for a Bald Eagle nest take/disturbance permit. It is actually two applications for one permit; a nest "take" and a nest "disturbance". Please reference the permit graphic I dropped off today. I also have a word of explanation.

All Bald Eagle nests are active in the nest selection period from March 1st to May 31st. Only those nests that are selected are considered active between June 1st and when the eaglets fledge (usually around Aug 15th) or Aug 31st; whichever comes first. All other times of the year Bald Eagle nests are considered inactive. The permit will cover 11 nests within ½ mile of the project.

DOT&PF would widen and straighten about 4 miles of the Glacier Highway. Virtually the entire uphill length of the project requires rock excavation (blasting). There are 7 nests on the downhill side of the road (nests nos. 79, 14A, 14, 103, 77, 15, and 57) that are jeopardy of damage from flyrock during blasting. It is unlawful to "take" a Bald Eagle nest at any time of the year. Even if we have a permit there is a fine assessed for the "take" of a nest, albeit a much smaller fine than if we "take" a nest and don't have a permit.

The application for a "take" permit covers the 7 downhill nests while they are inactive. The nest "disturbance" covers all 11 nests while they are active. Our mitigation includes the Contractor posting a \$500,000 bond to cover damages or fines associated with the "take" of a Bald Eagle nest.

Jim Scholl

Environmental Analyst
 ADOT&PF SE Region
 6860 Glacier Highway
 POB 112506
 Juneau Alaska 99811-2506

jim.scholl@alaska.gov

(907) 465 4498
 (907) 465 3506 FAX

From: Jordan_Muir@fws.gov [mailto:Jordan_Muir@fws.gov]
Sent: Tuesday, August 30, 2011 10:57 AM
To: Jordan_Muir@fws.gov
Cc: Tripp, Charles M (DOT); Scholl, James W (DOT)
Subject: RE: 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie Creek / supplemental permit information

Jim and Chuck,

I accidentally sent you an earlier version of the draft permit conditions. Please replace that document with the most up-to-date version attached below. Sorry for the confusion.

-Jordan

ATTACHMENT 10

9/19/2011

(See attached file: Draft Permit Conditions 8-29-2011.docx)

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
Jordan Muir/R7/FWS/DOI

**Jordan
Muir/R7/FWS/DOI**

08/29/2011 04:56 PM

To"Scholl, James W (DOT)" <jim.scholl@alaska.gov>
cc"Tripp, Charles M (DOT)" <chuck.tripp@alaska.gov>
SubjectRE: 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie Creek /
supplemental permit information

Jim and Chuck,

Attached are draft permit conditions for ADOT's Glacier Hwy Stage III project. These conditions are subject to change prior to issuance as a consequence of further review by the USFWS and/or tribal consultations.

In putting the conditions together I came across a slight discrepancy that needs clarifying. Specifically, part 1(A) of the application states "This permit application is for the potential disturbance of the 11 eagle nests due to noise and vibration...." However, part 1(B) includes a table (TABLE 2) that summarizes what is known about 14 nests (3 more than previously identified) that will be affected by the project So my question is whether the permit application is for 11 or 14 nests (nests 96, 87, 52, and 105 are not included in Table 1).

My second question is in relation to nest #77 (762 +45). This nest is identified in Table 1 as one of the 11 nests potentially impacted by the project, but is not included in Table 2. What is mislabeled? I'll need to sort nest identities out (including coordinates of each nest) prior to permit issuance.

I'll be out of the office 9/1 - 9/11 and will be happy to work with you prior to or after my absence.

Thanks!

-Jordan

(See attached file: Draft Permit Conditions 8-29-2011.docx)

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
"Scholl, James W (DOT)" <jim.scholl@alaska.gov>

**"Scholl, James W
(DOT)"**
<jim.scholl@alaska.gov>

08/29/2011 10:53 AM

ToJordan_Muir@fws.gov
cc"Tripp, Charles M (DOT)" <chuck.tripp@alaska.gov>
SubjectRE: 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie
Creek / supplemental permit information

Thank You!! I'm in the field on Tuesday and Wednesday so could you copy Chuck Tripp if you can't finish it today?

Jim Scholl
Environmental Analyst

9/19/2011

ADOT&PF SE Region
 6860 Glacier Highway
 POB 112506
 Juneau Alaska 99811-2506

jim.scholl@alaska.gov

(907) 465 4498
 (907) 465 3506 FAX

From: Jordan_Muir@fws.gov [mailto:Jordan_Muir@fws.gov]
Sent: Monday, August 29, 2011 10:24 AM
To: Scholl, James W (DOT)
Subject: Re: 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie Creek / supplemental permit information

Thanks Jim,

I'll work on pulling together draft permit conditions by the end of today.

-Jordan

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
 "Scholl, James W (DOT)" <jim.scholl@alaska.gov>

<p>"Scholl, James W (DOT)" <jim.scholl@alaska.gov> 08/22/2011 04:01 PM</p>	<p>To jordan_muir@fws.gov cc "Tripp, Charles M (DOT)" <chuck.tripp@alaska.gov> Subject 67526 JUN: Glacier Hwy, Eagle Beach Kayak Launch to Bessie Creek / supplemental permit information</p>
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Jordan, Thanks for talking to us today. Attached is the contract addendum you requested.

You also asked why DOT&PF could not suspend blasting activities during the active nesting period. Our response is:

It would not be practicable to suspend blasting activity during the active nest period because:

- Blasting activities occur along the entire length of the project and we need to complete the project in two years. Because there are numerous construction

9/19/2011

operations subsequent to blasting we need to blast in all months possible.

o The project is a safety upgrade the bring Glacier Highway up to current standards. There is an accident history within the project limits including a recent fatality and we intend to complete the project as quickly as possible . Two years is the shortest period a Contractor could reasonably be expected to complete the project.

Jim Scholl

Environmental Analyst
ADOT&PF SE Region
6860 Glacier Highway
POB 112506
Juneau Alaska 99811-2506

jim.scholl@alaska.gov

(907) 465 4498

(907) 465 3506 FAX

(See attached file: FaxAddendum1.pdf)

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE BALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

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. (50 CFR 22.26) - You are authorized to disturb bald eagles nesting among eleven nests (coordinates provided below) for purposes of rehabilitating the Glacier Highway between mileposts 29.5 and 33.6 in Juneau, Alaska from September 30, 2011 – September 15, 2013. Potential impacts to bald eagles include loss of two year's productivity for up to eleven breeding pairs. Authorized construction activities include:

- | | |
|-------------------------------------|--------------------------------|
| i. Clearing and grubbing | vii. Ditch reconditioning |
| ii. Drilling for blasting | viii. Grind and milling |
| iii. Blasting | ix. Place and grade of surface |
| iv. Excavating and loading material | x. Pave and compacting surface |
| v. Replacing culverts | xi. Guardrail post driving |
| vi. Haul and placing fill | |

F. (50 CFR 22.27) - During blasting activities you are also authorized to incidentally destroy seven inactive bald eagle nests (coordinates provided below) between mileposts 29.5 and 33.6 of the Glacier Highway in Juneau, Alaska from September 30, 2011 – December 31, 2013. A nest is determined to be inactive by the continuing absence of any adult, egg, or dependent young at the nest for at least 10 consecutive days immediately prior to, and including, at present.

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

- i. 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.
- ii. For every high quality nest (nests # 12, 103, 15, or 57) taken Alaska Department of Transportation shall donate \$15,000 dollars to The Conservation Fund. Funds shall be donated by December 31, of the year in which the take occurred.
- iii. For every medium quality nest (nests # 79, 14A, or 77) taken Alaska Department of Transportation shall donate \$5,000 dollars to The Conservation Fund. Funds shall be donated by December 31, of the year in which the take occurred. Contact:

The Conservation Fund
Brad A. Meiklejohn
Alaska Representative
2727 Hiland Road
Eagle River, AK 99577
(907) 694-9060

H. You are required to conduct annual monitoring of nests identified in Condition D until September 15, 2014. Monitoring must consist of:

i) April 15 – May 1, 2012 and 2013, conduct nest surveys to determine status (active vs. inactive) and occupancy (presence or absence of eggs and chicks) of each nest. To avoid disturbing eagles during the clutch initiation period, this survey may be conducted by boat and occupancy determined by adult behavior (e.g., incubating posture, food delivery, etc).

ii) July 15 – July 31, 2012 and 2013, conduct nest surveys to determine status (active or inactive), and occupancy (presence or absence of eggs and chicks) of each nest.

iii) July 2014, conduct nest surveys to determine status (active vs. inactive) and occupancy (presence or absence of eggs or chicks)

You must submit an annual report summarizing the information you obtained through monitoring to the Migratory Bird Permit Office by December 31, 2011-2014. Reports shall be submitted to:

**U.S. Fish and Wildlife Service
Migratory Bird Management
ATTN: Jordan Muir
1011 E Tudor Road MS-201
Anchorage, AK 99503, 907-786-3503**

I. You must submit a nest take report to the Migratory Bird Permit Office within 10 days following the take of any eagle nest or of the expiration of this permit whichever occurs first. Form 3-202-16 (Eagle Nest Take Report) can be found online at www.fws.gov/forms/3-202-16.pdf

J. This permit does not authorize intentional lethal take or injury of eagles or eggs, nor does it authorize take of the nest in the event an eagle occupies the nest prior to nest destruction.

K. You must contact the Migratory Bird Permit Office (907-786-3503 or 907-786-3693) immediately upon discovery of unanticipated take.

L. You must immediately notify the Migratory Bird Permit Office (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).**

M. If a nest is destroyed you are authorized to salvage any eagle carcasses, feathers and parts including nonviable eggs found in or around the nest. All eagle carcasses must be immediately frozen and shipped along with molted feathers and parts within 10 days of salvage to the National Eagle Repository. All eagle carcasses, molted feathers and parts should be shipped overnight shipping and shipped only on Monday – Wednesday. Contact: **U.S. Fish and Wildlife Service National Eagle and Wildlife Repository, 5650 Havana St., Building 128, RMA, Commerce City, Colorado, 80022, (303) 287-2110.**

Nonviable eagle eggs must be delivered to the Migratory Bird Management Office of the U.S. Fish and Wildlife Service. Contact: **Stephen B. Lewis, Migratory Bird Management, U.S. Fish and Wildlife Service, 3000 Vintage Boulevard, Suite 201, Juneau, Alaska 99801, (907) 780-1163.**

N. 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.

O. 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.

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

Q. All of the provisions and conditions of the governing regulations at 50 CFR part 13, 50 CFR 22.26 and 50 CFR 22.27 are conditions of your permit. Failure to comply with the conditions of your permit could be cause for suspension of the permit and/or citation. For copies of the regulations, visit: www.fws.gov/permits/mbpermits/birdbasics.html.

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

S. 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.

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 any wildlife held, and to audit or copy any permits, books or records required to be kept by the permit and governing regulations (50 CFR 13.46, 50 CFR 22.26, and 50 CFR 22.27).

V. You may not conduct the activities authorized by this permit if doing so would violate the laws of the applicable State, county, municipal or tribal government or any other applicable law.

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 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.

Y. 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 are subject to revision for purposes of any future permit issued under this section.

Z. 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.

BAEA nest coordinates (NAD83):

FWS #96

xxxxxxxxxx

xxxxxxxxxxxxxx

FWS #87

FWS #52

FWS #79

FWS #104

FWS #14A
FWS #14
FWS #91
FWS #103
FWS #77A
FWS #105
FWS #15
FWS #57
FWS #73
FWS #77???

DRAFT



CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

PLANNING COMMISSION
NOTICE OF DECISION

Date: June 9, 2004

File No.: CSP2004-00006

Alaska Dept of Transportation/ PF
Attn: Russell Kraemer
6860 Glacier Highway
Juneau, AK 99801

Application For: State Project review of Glacier Highway and trailhead reconstruction from South Tee Harbor to Bessie Creek under State project no.: 68096/AK PFH-2-1(1).

Legal Description: 0

Parcel Code No.: 0

Hearing Date: June 8, 2004

The Planning Commission, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated June 8, 2004 and approved the State Project review of Glacier Highway and trailhead reconstruction from South Tee Harbor to Bessie Creek under State project no.: 68096/AK PFH-2-1(1), to be conducted as described in the project description and project drawings submitted with the application.

Attachments: June 8, 2004, memorandum from Sam Kito III, Community Development to the CBJ Planning Commission regarding CSP2004-00006.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c).


Effective Date: The approval is effective upon approval by the Commission
June 8, 2004


Expiration Date: The approval will expire 18 months after the effective date, or December 8, 2005, if no Building Permit has been issued or substantial construction progress has not been made in accordance with the plans for which the

State of Alaska DOT
File No.: CSP2004-00006
June 9, 2004
Page 2 of 2

approval was granted. Application for approval extension must be submitted thirty days prior to the expiration date.

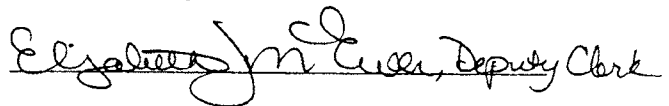
Project Planner:



Sam Kito II, Transportation Planner

Johan Dybdahl, Chairman
Planning Commission

Filed With City Clerk

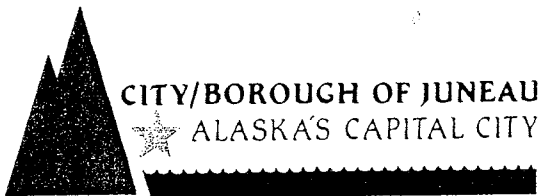


Elizabeth J. Evers, Deputy Clerk

June 14, 2004

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center 1 (800) 949-4232, or fax (360) 438-3208.



**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: August 21, 2001

File No.: VAR2001-00017

Bob Millard
CBJ, Engineering
155 South Seward Street
Juneau, AK 99801

Application For: A variance to reduce the required setback from an eagle nest tree on public land from 330 feet to 50 feet, and greater setback distances for three other eagle nest trees, for the proposed use of a rock quarry at Stabler's Point.

Legal Description: USS 3810, Lot 1

Parcel Code No.: 4-B30-0-102-002-0

Hearing Date: August 14, 2001

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated August 10, 2001 and approved the variance to reduce the required setback from an eagle nest tree on public land from 330 feet to 50 feet, and greater setback distances for three other eagle nest trees as described in the project description and project drawing submitted with the application and with the following conditions:

1. The applicant shall assure that the rock extraction operations are scheduled consistent with the recommendations of the U.S. Fish and Wildlife Service for the protection of nesting eagles; and
2. The applicant shall insure that no heavy equipment operations or blasting take place within the Stabler's Point rock quarry between within 330 feet of an eagle nest tree from March 1 through May 31, subject to modification from the USFWS.
3. The applicant shall employ a qualified eagle monitor during the time period of June 1 through August 31, if quarry operations take place within 330 feet of an eagle nest tree determined to be active by U.S. Fish and Wildlife Service, or other measures deemed acceptable by the USFWS.
4. The attached eagle monitoring standards shall reflect these conditions of approval and be applied to any quarry operation at Stabler's Point.

ATTACHMENT 12

Bob Millard
File No.: VAR2001-00017
August 21, 2001
Page 2 of 2

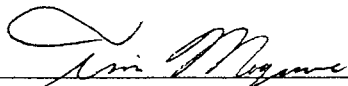
Attachment: An August 10, 2001, memorandum from Tim Maguire, Community Development to the CBJ Planning Commission regarding VAR2001-00017.

This Notice of Decision constitutes a final decision of the CBJ Planning Commission. Appeals must be brought to the CBJ Assembly in accordance with CBJ 01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ 01.50.030 (c).

Effective Date: The permit is effective upon approval by the Commission (August 14, 2001)

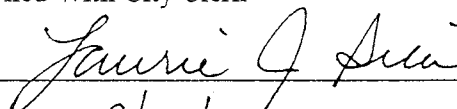
Expiration Date: The permit will expire 18 months after the effective date or February 14, 2003, if substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days before the permit expires.

Project Planner:


Tim Maguire, Planner


Johan Dybdahl, Chairman
Planning Commission

Filed With City Clerk


8/30/2001

cc: Plan Review
Terry Brenner
Steve Gilbertson
Point Lena
Frank Mielke
Mike Jacobson

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice - 202-272-5434, or fax 202-272-5447, NW Disability Business Technical Center - 1-800-949-4232, or fax 360-438-3208.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Juneau Field Office - Raptors
3000 Vintage Blvd., Suite 240
Juneau, Alaska 99801-7100

(907) 586-7243



Received
on

JUL 17 2001

CBJ
Permit Center

July 13, 2001

Tim Maguire
Community Development Department
City/Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Dear Tim:

This replies to your memorandum of June 20, 2001 concerning the Conditional Use Permit Application for the Stabler Point Rock Quarry. The application includes a request for a variance to reduce the minimum 330-foot development setback requirement from bald eagle nest trees.

Bald eagles have nested at Stabler Point at least since the mid-1970s, and seem to have tolerated a great deal of human activity. The intensity of human activity levels during rock quarry operations near the nest sites is considerable. The eagle monitoring specifications developed for this project are important, but monitoring by itself will not necessarily prevent the taking of eagles. The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) requires that all parties working in the vicinity of bald eagles avoid the take "at any time or in any manner any bald eagle...or any part, nest or egg thereof". Take is defined by the Act to include "molest or disturb".

Habitat near the Stabler Point eagle nests is undergoing major modification. Even eagles that are highly tolerant of human activity may be significantly impacted. We continue to recommend there be no heavy construction activity within 330 feet of bald eagle nest trees from March 1 through May 31, and this period should extend to August 31 if a nest is in active use by eagles. If it is decided to conduct rock quarry operations during the bald eagle nesting season, the eagle monitoring specifications outlined in the permit application will be essential.

Sincerely,

Mike Jacobson
Eagle Management Specialist

PART 1 – GENERAL

1.1 DESCRIPTION

- A. This work shall consist of engaging a Professional Services Contractor to provide a monitor to observe eagle activity at the eagle nests identified on the Stabler Point Rock Quarry Usage Plan in order to comply with this Section.

1.2 DEFINITIONS

- A. Bald Eagle Protection Act: Federal law prohibiting the disturbance of bald eagles, their nests or their young.
- B. Eagle Monitor: Person working for the Professional Services Contractor who is qualified to make determinations regarding disturbances to bald eagles that would constitute a violation of the Bald Eagle Protection Act.
- C. Restricted Work Zone: A 330-foot circle around a tree containing a bald eagle nest.
- D. Nest Selection Period: March 1 – June 1.
- E. Egg Laying / Young Rearing Period: June 1 – August 31.
- F. Fly Rock: Airborne rock that is propelled through the air by a blast.

1.3 SUBMITTALS

- A. Identification and qualifications of eagle monitor shall be submitted 14 days prior to eagle monitor beginning work in the field. Copy information to the United States Fish and Wildlife Service, Raptors Division.
- B. Proposed Activity: submit a plan of the activities planned to take place while the eagle monitor is under hire. Copy information to the United States Fish and Wildlife Service, Raptors Division.
- C. Monitoring Plan: submit an eagle monitoring plan that is coordinated with the CONTRACTOR'S proposed activity plan. Copy information to the United States Fish and Wildlife Service, Raptors Division.
- D. Weekly Reports: When employed, the eagle monitor shall submit a weekly report to the ENGINEER including the following at a minimum:
1. Hours of observation.
 2. Hours of CONTRACTOR activity.
 3. Type of CONTRACTOR activity.
 4. Clearing within 50 feet of an eagle tree.
 5. Notable eagle activity.
 6. Areas of non-compliance by the CONTRACTOR as defined in this Section.

Received
on

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1.4 QUALITY ASSURANCE

- A. The eagle monitor shall meet one of the following criteria:

CBJ
Permit Center

SECTION 01520 – EAGLE MONITORING

1. Have a bachelor of science degree in biology, environmental science or ecology and be presently working in that profession.
 2. Have 2 years experience monitoring and observing eagles or studying their habitat.
- B. The on-site eagle monitor shall be an employee of the Professional Services Contractor and shall be at least 18 years of age and in good physical condition.

1.5 NON-COMPLIANCE

- A. The CONTRACTOR shall be considered in non-compliance if:
1. There is evidence that eagles and/or fledglings are disturbed during the restricted work time periods;
 2. Work occurs in a restricted work zone during a restricted time period without an eagle monitor present.

1.6 ENFORCEMENT

- A. If the CONTRACTOR is in non-compliance for disturbance of an eagle, all restricted work shall cease.
- B. If the CONTRACTOR is in non-compliance for working without an eagle monitor, the CONTRACTOR shall be fined at a rate of \$500 per occurrence, beginning with the second offense.

PART 2 – PRODUCTS (Not Used)

- A. A video camera with a minimum 10 power zoom lens shall be used to monitor and record nest activity.

PART 3 – EXECUTION

3.1 REQUIREMENTS

- A. In order to protect eagles during the nest selection, no heavy equipment operations shall take place within 330 feet of the nesting tree from March 1 to May 31. If the nest is not active on June 1, construction activities can proceed without restriction. If the nest has been selected, and has an active pair of eagles on June 1, no heavy equipment operation shall occur within 330 feet or blasting within 2,640 feet of the nesting tree through August 31.
- B. If the CONTRACTOR elects to work within the above noted restricted dates, monitoring of the nest by a qualified eagle monitor shall be conducted. If evidence of disturbance to adult and/or fledglings is observed, all construction activity as noted above shall cease.
- C. The CONTRACTOR shall notify the U.S. Fish and Wildlife Service (USFWS) when an eagle monitor will be used. The CONTRACTOR shall provide the beginning and estimated finish date for the eagle monitor work.

SECTION 01520 - EAGLE MONITORING

- D. The Professional Services Contractor shall prepare an eagle monitoring plan in conjunction with the CONTRACTOR'S work plan. Dependent upon the number of nests with eagle activity, more than one eagle monitor may be required. Both plans shall be submitted to the ENGINEER.
- E. A nest that has been selected shall be monitored and recorded using a video camera during all hours of observation.

3.2 CLEARING AND BLASTING

- A. Damage to eagle nesting trees due to blow down by wind is a possibility. Tree clearing activity within 50 feet of a nest tree shall be documented and submitted to the ENGINEER.
- B. Fly rock from blasting can cause significant damage to nests. Eagle trees shall be shielded from fly rock.

END OF SECTION

BOARD OF ADJUSTMENT
NOTICE OF DECISION

Date: May 14, 2008

File No.: VAR2008-00006

CBJ Engineering Department
Attention: Alan Steffert
155 South Seward Street
Juneau, AK 99801

Application For: Proposed expansion of existing Stablers Point rock quarry pit within an eagle's nest habitat setback.

Legal Description: USS 3810 Lot 1 FR

Parcel Code No.: 4-B30-0-102-002-0

Hearing Date: May 13, 2008

The Board of Adjustment, at its regular public meeting, adopted the analysis and findings listed in the attached memorandum dated May 6th, 2008 and approve the Variance to be conducted as described in the project description and project drawing submitted with the application and with the following conditions:

1. The applicant shall assure that the rock extraction operations are scheduled consistent with the recommendations of the U.S. Fish and Wildlife Service for the protection of nesting eagles; and
2. The applicant shall insure that no heavy equipment operations or blasting take place in the Stablers Point Rock Quarry within 330 feet of an eagle nest tree between March 1 through May 31, subject to modification from the USFWS.
3. The applicant shall employ a qualified eagle monitor during the time period of June 1 through August 31, if quarry operations take place within 330 feet of an eagle nest tree determined to be active by U.S. Fish and Wildlife Service, or other measures deemed acceptable by the USFWS.
4. The attached eagle monitoring standards shall reflect these conditions of approval and be applied to any quarry operation at Stablers Point.

Attachment: May 6th, 2008 memorandum from Eric Feldt, Community Development to the CBJ Board of Adjustment regarding VAR2008-00006.

This Notice of Decision does not authorize construction activity. Prior to starting any development project, it is the applicant's responsibility to obtain a building permit for any and all improvements requiring such.

This Notice of Decision constitutes a final decision of the CBJ Board of Adjustment. Appeals must be brought to the CBJ Assembly in accordance with CBJ §01.50.030. Appeals must be filed by 4:30 P.M. on the day twenty days from the date the decision is filed with the City Clerk, pursuant to CBJ §01.50.030 (c). Any action by the applicant in reliance on the decision of the Board of Adjustment shall be at the risk that the decision may be reversed on appeal (CBJ Sec. 49.20.120).

CBJ Engineering Department
File No.: VAR2008-00006
May 14, 2008
Page 2 of 2

Effective Date: The permit is effective upon approval by the Board, May 13th, 2008.

Expiration Date: The permit will expire 18 months after the effective date or November 13th, 2009, if no Building Permit has been issued and substantial construction progress has not been made in accordance with the plans for which the development permit was authorized. Application for permit extension must be submitted thirty days prior to permit expires.

Project Planner: _____

Eric Feldt, Planner
Community Development Department

Daniel Bruce, Chairman
Planning Commission

Filed With City Clerk

Date 5/15/08

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA-trained architect or other ADA trained personnel with questions about the ADA: Department of Justice - 202-272-5434, or fax 202-272-5447, NW Disability Business Technical Center - 1-800-949-4232, or fax 360-438-3208.

Teri Camery

From: Jordan_Muir@fws.gov
Sent: Wednesday, September 21, 2011 3:29 PM
To: Teri Camery
Cc: 'scott_frickey@fws.gov'
Subject: RE: take and disturbance definitions

Teri,

You bring up an excellent question. Our solicitors and Office of Law Enforcement are probably best qualified to answer your question but given the time constraints you are under I will do my best to answer them now. As you are aware there are two permit types (1) the Nest Take Permit and (2) the Eagle Take Permit. The Nest Take Permit only authorizes take of a nest structure as a function of it's activity status (active vs. inactive). It does not address or authorize take/disturbance of eagles and/or their eggs. In contrast, an Eagle Take Permit may authorize take of eagles and/or their eggs only, but does not address or authorize take/disturbance of nest structures.

With this in mind we can hypothesize three different scenarios:

- 1) A project proponent does not possess a USFWS Eagle Take or Eagle Nest Take Permit. In the course of their work they inadvertently take a nest or disturb/take an eagle or their eggs. Per the Eagle Act they would be subject to fines and/or imprisonment..
- 2) A project proponent possesses a USFWS Eagle Nest Take Permit for a non-emergency scenario. In the course of their work they inadvertently take an **active** nest, an eagle, or egg. Per the Eagle Act they would be subject to fines and/or imprisonment.
- 3) A project proponent possesses a USFWS Eagle Take Permit. In the course of their work they inadvertently take a nest (active or inactive). Per the Eagle Act they would be subject to fines and/or imprisonment. Per conditions of the USFWS permit they may or may not be authorized to take eggs, chicks, or adults. One example I gave where lethal where lethal take of adult/sub-adult eagles may be authorized is at a wind facility. However, the Service created the new Eagle Rule anticipating that the most common type of eagle would be in the form of eggs and/or chicks. Specifically, activities would be conducted in close enough proximity to nests that (1) adults would abandon their eggs/chicks, (2) incubating/brooding adults would flush from the nest and in the process "knuckle" or otherwise jeopardize the integrity of the eggs, (3) averse to the construction activities adult eagles would stop delivering food to chicks resulting in their demise, (4) frightened by the activities young would prematurely fledge from the nest, etc. This is the type of disturbance USFWS would expect from the current project. For this purpose draft permit conditions L and M authorize ADOT to handle and deliver eggs and chicks to the nearest raptor rehabilitation center (JRC). Historically, Eagle Permit conditions for ADOT also require that nest monitors first determine adult eagles are not in close proximity to the nest prior to detonating the charge to avoid incidental take of the adults. This does not require much effort on ADOT's part as, per our discussion, they should already have a nest monitor present to determine if blasting has taken the nest or not.

I'm heading into a meeting at 3:30 but should be available tomorrow morning if you have any additional questions.

ATTACHMENT 14

9/22/2011

Thanks,

Jordan

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
 Teri Camery <Teri_Camery@ci.juneau.ak.us>

Teri Camery
 <Teri_Camery@ci.juneau.ak.us>

09/21/2011 11:55 AM

To: "Jordan_Muir@fws.gov"
 <Jordan_Muir@fws.gov>
 cc: "scott_frickey@fws.gov"
 <scott_frickey@fws.gov>

Subject: RE: take and disturbance definitions

Thank you Jordan, and thanks for the helpful conversation this morning. Of course, I have another question.

I am trying to understand when the \$250,000 fine would and would not apply in this situation. DOT's proposed eagle permit allows for "take" of up to 7 eagle nests and "disturbance" of up to 11 nests. The definition of "take" in the information below includes wound and kill, among other things. I have heard that the proposed eagle permit would not allow killing eagles (by fly-rock, for example). But if the eagle permit allows "take," then it appears to allow "kill," and DOT would then be exempt from the \$250,000 (or \$500,000 if DOT is considered an organization) fine.

Could you explain this difference to me again? The Planning Commission is likely to ask, so I need to be sure that I understand this well. Thanks so much for your patience with my questions.

Teri

Teri Camery, Senior Planner
 City and Borough of Juneau
 Community Development Department
 155 S. Seward
 Juneau, AK 99801
 (907) 586-0755 phone; (907) 586-3365 fax



Please consider the environment before printing this email.

From: Jordan_Muir@fws.gov [mailto:Jordan_Muir@fws.gov]

Sent: Wednesday, September 21, 2011 10:43 AM

9/22/2011

To: Teri Camery
Subject: RE: take and disturbance definitions

Teri,

here are potential penalties for take of an active nest:

Bald and Golden Eagle Protection Act

"The bald eagle will continue to be protected by the Bald and Golden Eagle Protection Act even though it has been delisted under the Endangered Species Act. This law, originally passed in 1940, provides for the protection of the bald eagle and the golden eagle (as amended in 1962) by prohibiting the take, possession, sale, purchase, barter, offer to sell, purchase or barter, transport, export or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit (16 U.S.C. 668(a); 50 CFR 22). "Take" includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb (16 U.S.C. 668c; 50 CFR 22.3). The 1972 amendments increased civil penalties for violating provisions of the Act to a maximum fine of \$5,000 or one year imprisonment with \$10,000 or not more than two years in prison for a second conviction. Felony convictions carry a maximum fine of \$250,000 or two years of imprisonment. **The fine doubles for an organization.** Rewards are provided for information leading to arrest and conviction for violation of the Act." -

<http://www.fws.gov/midwest/eagle/protect/laws.html>

-Jordan

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