


MEMORANDUM

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

DATE: November 4, 2013

TO: Board of Adjustment

FROM: Chrissy A. McNally, Planner 
Community Development Department

FILE NO.: VAR2013 0018

PROPOSAL: Variance request for AKDOT to conduct road rehabilitation along Egan Drive within the 330 foot required setback of an eagle nest.

GENERAL INFORMATION

Applicant: State of Alaska Department of Transportation & Public Facilities

Property Owner: State of Alaska Department of Transportation & Public Facilities

Property Address: 10th Street to Mendenhall Loop Road on Egan

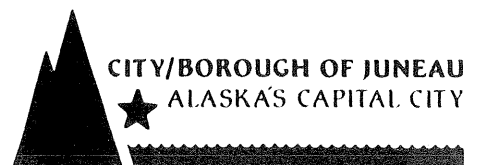
Parcel Code Number: Right-of-way

Site Size: 8.1 miles in length

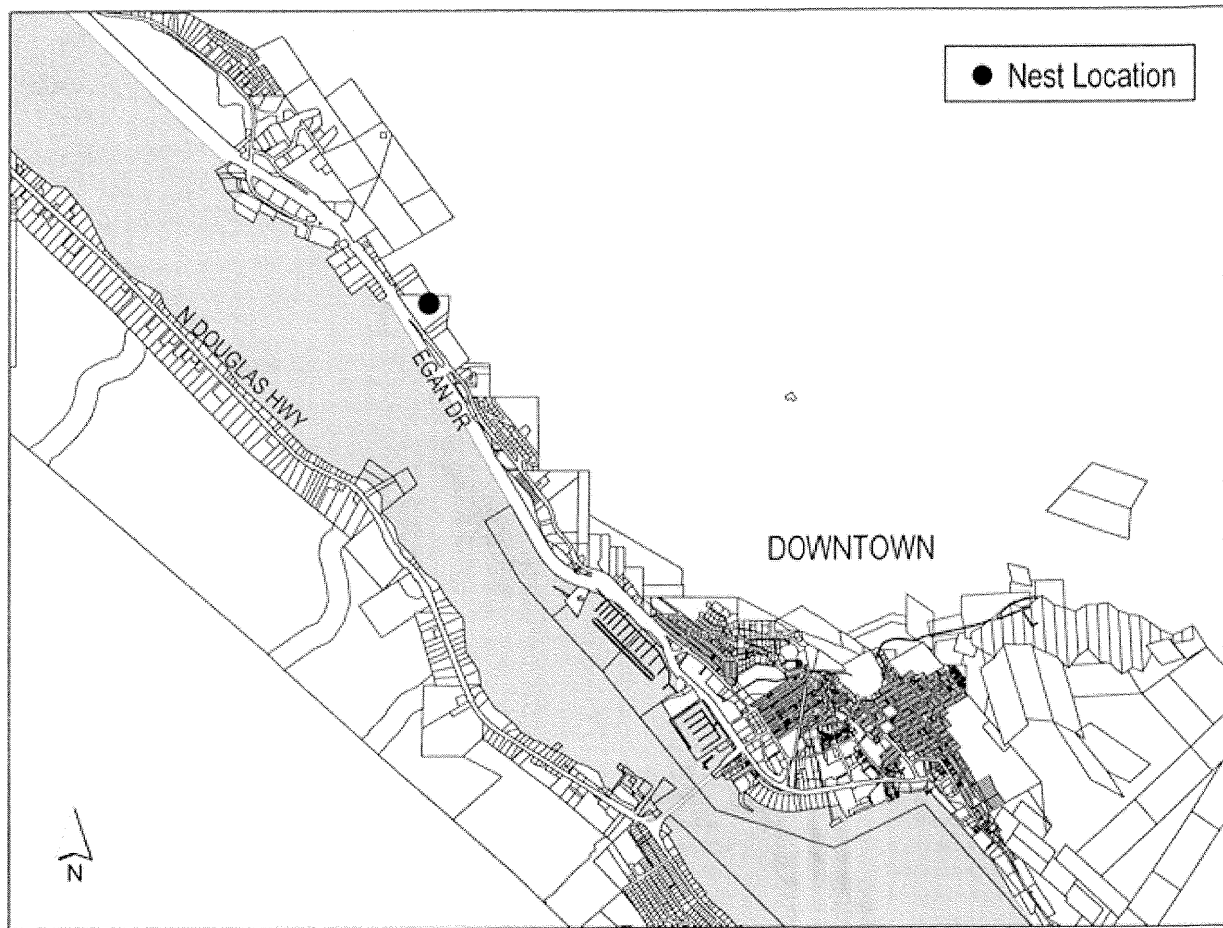
Zoning: Arterial Road

Utilities: Public

Existing Land Use: Limited-Access Arterial Highway



VICINITY MAP



ATTACHMENTS

- Attachment A Development Permit Application
- Attachment B Variance Application
- Attachment C Vicinity Map
- Attachment D Applicant aerial survey maps
- Attachment E Applicant aerial survey table
- Attachment F USFWS Eagle Take Permit Application

PROJECT DESCRIPTION

Egan Drive is part of the National Highway System and is classified as an arterial roadway that experiences Average Daily Traffic (ADT) of approximately 20,000 - 25,000 vehicles throughout the project area. This roadway experiences the highest average daily traffic of any in the City and Borough of Juneau (CBJ). The applicant, Alaska Department of Transportation and Public Facilities (AKDOT&PF), is proposing to conduct preventative maintenance on approximately eight miles of Egan Drive between the 10th Street intersection and Mendenhall Loop Road (see Attachment C). This stretch of roadway is scheduled for resurfacing as well as replacement of

guardrails and signage, drainage and pedestrian improvements. This project received a local consistency review through CSP2013 0017. Construction is expected to begin in spring 2014 and continue through the end of 2014.

The proposed development requires a Variance for construction within 330 feet of an eagle nest during the construction period. 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;*

Aerial surveillance was conducted by DOT&PF in May 2013 along the project area. The survey attempted to distinguish between active nests, non-active nests, and nests observed with incubating adults. The Variance sought in this report is related to Nest #40. This nest was not located during the May 2013 survey, but in a previous survey and so was included in the table (see Attachment D & E).

BACKGROUND

CBJ has traditionally relied on the expertise of the Juneau USFWS field office to evaluate and condition, if necessary, projects within the 330 foot eagle nest buffer. The 2008 Comprehensive Plan acknowledges this relationship under POLICY 7.14.IA4;

“Request that the USFWS evaluate the bald eagle in the CBJ urban area in terms of population, behavior and tolerance of human presence and activity. Consider any new suggestions from USFWS for enhancing the presence and health of eagles in the urban area.”

AKDOT&PF applied for an Eagle Permit from the U.S. Fish and Wildlife Service (USFWS) which will authorize disturbance of eagles along the project route (see Attachment F). AKDOT&PF anticipates receiving an approved application, but has yet to receive approval at the writing of this staff report.

The application materials required by USFWS provide the CBJ with appropriate information to conduct a thorough review of the proposed variance. While the variance is not contingent upon receiving an approved permit from USFWS, the CBJ variance decision is based upon the design set forth in the USFWS Eagle Take Permit application material. Staff is therefore considering that material as the material on which it can judge if there are sufficient mitigation measures and protective measures in place by AKDOT&PF to meet the variance standards of Title 49.

While bald eagles were removed from the Endangered Species list in 2007, the Bald and Golden

Eagle Protection Act (Eagle Act) ensures their continued preservation. In September 2009, USFWS instituted two new permits to allow limited incidental take or disturbance of eagles through public safety activities or other development projects. The Eagle Act defines disturbance 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.”

If an applicant receives a permit for disturbance, any activity related to the approved project description is allowed except for cutting the tree or killing the eagle. The USFWS permit requires nesting surveys to be conducted prior to construction, to identify all eagle nests within 660 feet of the proposed construction activities as well eagle foraging areas in the vicinity of the construction site. The permit also limits vegetative clearing within a 330' foot radius of the nest site. In some instances, the applicant is required to submit an annual eagle monitoring report for three years following the completion of the activity.

USFWS eagle permits are voluntary, not mandatory. However, issuance of an eagle permit provides the applicant with a guarantee against federal prosecution under the Eagle Act if the project results in disturbance or take. It's up to the applicant to determine whether the risk of disturbance from the project is worth the time and cost of obtaining the federal permit. If an applicant has obtained an eagle permit from USFWS through the federal permit process, CBJ will defer to the USFWS recommendation. CBJ will not, however, repeat federal permit conditions on CBJ authorizations. If the applicant has not obtained a USFWS permit, since the permit is voluntary, CBJ will seek as much information as possible from USFWS about the sensitivity of the particular nest and what modifications may be needed to ensure protection.

ANALYSIS

Variance Requirements

Under CBJ §49.20.250 where hardship and practical difficulties result from an extraordinary situation or unique physical feature affecting only a specific parcel of property or structures lawfully existing thereon and render it difficult to carry out the provisions of Title 49, the Board of Adjustment may grant a Variance in harmony with the general purpose and intent of Title 49. A Variance may vary any requirement or regulation of Title 49 concerning dimensional and other design standards, but not those concerning the use of land or structures, housing density, lot coverage, or those establishing construction standards. A Variance may be granted after the prescribed hearing and after the Board of Adjustment has determined:

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

The relaxation applied for would give substantial relief to the property owner, AKDOT&PF, by allowing maintenance of Egan Drive. A lesser relaxation is not practical because the maintenance must take place on the specified right-of-way within 330' of an existing eagle nest. Failing to maintain the roadway would result in a public safety hazard. The Variance would be consistent with justice to other property owners along the highway by allowing required maintenance to provide safe access to their property.

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...;
- 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;
- 6) To recognize the economic value of land and encourage its proper and beneficial use.

A grant of the variance would allow construction in accordance with intent numbers 1, 2, 3, 4, and 6 to proceed within the summer building season while minimizing disturbance to eagles by following the requirements of the USFWS Eagle Permit, which includes limited vegetation removal, eagle nest monitoring, and reporting requirements.

This criterion is met.

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

Construction within the eagle nest setback would not injure nearby property. All work would be within the right-of-way. While traffic delays can be expected with the duration of the project, a Variance to the eagle nest setback would not further impact delays associated with road construction.

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;*

Highway maintenance is not identified in the Table of Permissible Uses. However, compliance with the standard would unreasonably prevent the owner, AKDOT&PF, from maintaining Egan Drive. Road construction must take place during the warmer months that coincide with the eagle nesting period.

This sub-criterion is 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, AKDOT&PF, from maintaining the section of Egan Drive that lies within 330 feet of an eagle nest in a manner which is consistent with the amenities and appearance of the rest of Egan Drive. Allowing the highway to fall into disrepair would create a public safety hazard and be detrimental to the amenities, appearance, and features of existing development in the neighborhood of the subject property. However, comparing Egan Drive to other residential properties or other development in the neighborhood adjacent to the right-of-way is not a relevant comparison.

This sub-criterion is met.

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

There is no alternative to conducting the necessary maintenance in the developed right-of-way.

This sub-criterion is 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 Egan Drive.

This sub-criterion is not 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 Egan Drive from the Juneau-Douglas Bridge intersection to the Mendenhall Loop intersection to be maintained according to current road safety standards, which would provide a significant benefit to the neighborhood. Mitigation measures enforced by the USFWS through the applicant's eagle permit would ensure that detriments to eagle nests and eagle nesting behavior would be minimized to the greatest extent practicable. There is an abundance of eagle nests along Egan Drive, indicating that bald eagles have become habituated to human development. Therefore, the Variance would result in more benefits than detriments to the neighborhood.

This criterion is met.

FINDINGS

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

Yes. Staff finds 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.

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

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

RECOMMENDATION

Staff recommends that the Board of Adjustment adopt the Director's analysis and findings and approve the requested Variance, VAR2013 0018. The Variance permit would allow for road maintenance within 330 feet of an eagle nest along Egan Drive.

DEVELOPMENT PERMIT APPLICATION

Project Number <u>VAR20130018</u>	CITY and BOROUGH of JUNEAU	Date Received: <u>8/16/13</u>
Project Name (City Staff to Assign Name)		

PROJECT / APPLICANT INFORMATION	Project Description <u>Egan Drive Pavement Rehabilitation 10th St. to Mendenhall Loop Rd.</u>		
	PROPERTY LOCATION		
	Street Address <u>Egan Drive, 10th St. to Mendenhall Loop Rd.</u>	City/Zip <u>99801</u>	
	Legal Description(s) of Parcel(s) (Subdivision, Survey, Block, Tract, Lot)		
	Assessor's Parcel Number(s)		
	LANDOWNER/ LESSEE		
	Property Owner's Name <u>State of Alaska, DOT&PF</u>	Contact Person: <u>Jane Gendron</u>	Work Phone: <u>465-4499</u>
	Mailing Address <u>PO Box 112506, Juneau, AK 99811-2506</u>	Home Phone:	Fax Number:
	E-mail Address <u>jane.gendron@alaska.gov</u>	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 <u>Same</u> 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 at X below			
Applicant's Name <u>Same.</u>	Contact Person:	Work Phone:	
Mailing Address	Home Phone:	Fax Number:	
E-mail Address	Other Contact Phone Number(s):		
X <u>[Signature]</u> Applicant's Signature	<u>John Barrett</u> FOR JANE GENDRON	<u>8-14-2013</u> Date of Application	

STAFF APPROVALS	OFFICE USE ONLY BELOW THIS LINE				
	<input checked="" type="checkbox"/>	Permit Type	***SIGN	Date Received	Application Number(s)
		Building/Grading Permit			
		City/State Project Review and City Land Action			RECEIVED
		Inquiry Case (Fee In Lieu, Letter of ZC, Use Not Listed)			AUG 16 2013
		Mining Case (Small, Large, Rural, Extraction, Exploration)			PERMIT CENTER/CDD
		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)			
	<input checked="" type="checkbox"/>	Variance Case (De Minimis and all other Variance case types)		<u>8/16/13</u>	<u>VAR20130018</u>
	Wetlands Permits				
	Zone Change Application				
	Other (Describe)				
***Public Notice Sign Form filled out and in the file.					
Comments:				Permit Intake Initials	
_____				<u>[Signature]</u>	

NOTE: DEVELOPMENT PERMIT APPLICATION FORMS MUST ACCOMPANY ALL OTHER COMMUNITY DEVELOPMENT DEPARTMENT APPLICATIONS
 I:\FORMS\2010 Applications Revised November 2009



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of Transportation
and Public Facilities**

SOUTHEAST REGION
DESIGN & ENGINEERING SERVICES
Preconstruction

6860 Glacier Highway
PO Box 112506
Juneau, Alaska 99811-2506
Main: 907.465.4444
Toll free: 800.575-4540
Fax: 907.465.4414

August 15, 2013

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

RE: Juneau Egan Drive Pavement Rehabilitation 10th St. to Mendenhall Loop Rd.
Federal/ State Project Number: NH-0932(049)/68129
Subject: Variance Application

To the Borough Assembly:

VAL 20130018

Please accept the attached variance application and supporting material regarding a variance for development activities within 330 feet of an active bald eagle nest. The Alaska Department of Transportation and Public Facilities (DOT&PF) is proposing to resurface Egan Drive between 10th Street and Mendenhall Loop Road during the 2014 construction season. Project activities will include guardrail post driving and grind and pave equipment operating within 330 feet of one bald eagle nest. The attached materials give a full description of project location and details, and include a copy of the USFWS eagle permit application.

Should you have any questions or need additional information, please contact Hilary Lindh at (907) 465-4645 or by e-mail at hilary.lindh@alaska.gov.

Sincerely,

John Barnett
Acting Regional Environmental Manager
DOT&PF Southeast

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"Keep Alaska Moving through service and infrastructure."

Attachment B

Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
State #68129/Federal # NH-0932(049)
Application for Bald Eagle Non-Purposeful Take Permit

Enclosures:

Variance Application
Variance Approval Criteria
Application for USFWS Eagle Permit
Project Description
Project Area Maps (Location Map and Nest Locations)

Cc without enclosures:

Chuck Tripp, P.E., DOT&PF Project Manager
Amy Sumner, DOT&PF Statewide NEPA Manager
Hilary Lindh, DOT&PF Environmental Analyst

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Attachment B

VARIANCE APPLICATION

TO BE COMPLETED BY THE APPLICANT

Project Number	Project Name (15 characters)	Case Number <u>VAL20130018</u>	Date Received <u>8/16/13</u>
----------------	------------------------------	-----------------------------------	---------------------------------

TYPE OF VARIANCE REQUESTED:

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

DESCRIPTION OF ACTIVITY WHICH REQUIRES A VARIANCE:

DOT&PF proposes a project to rehabilitate pavement on Egan Drive from 10th St. to Mendenhall Loop Rd. Activities would include grinding and paving, culvert work, replacement of guardrail, signs, curb, gutter, and sidewalk, and road striping.

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): _____

None

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

WHY WOULD A VARIANCE BE NEEDED FOR THIS PROPERTY REGARDLESS OF THE OWNER?

Bald eagles nest within 330 feet of Egan Drive, and project activities would potentially occur within 330 feet of an active bald eagle nest. The eagles are habituated to the high volume of commuter, commercial and industrial traffic on Egan Drive, as well as other human activities.

WHAT HARDSHIP WOULD RESULT IF THE VARIANCE WERE NOT GRANTED?

Juneau residents would suffer if the main access road between downtown and valley were allowed to further deteriorate.

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.

VARIANCE FEES

Fees	Check No.	Receipt	Date
Application Fees \$ <u>400⁰⁰</u>	_____	_____	_____
Adjustment \$ _____	_____	_____	_____
Total Fee \$ <u>400⁰⁰</u>	<u>CC</u>	<u>CDD4171</u>	<u>8/16/13</u>

NOTE: MUST BE ACCOMPANIED BY DEVELOPMENT PERMIT APPLICATION FORM

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Attachment B

Variance Approval Criteria

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

Relaxation of the CBJ code would give substantial direct relief to the right-of-way (ROW) owner, DOT&PF, to reduce maintenance costs to Egan Drive. The indirect benefit of justice delivered to CBJ residents and visitors would be safe access for all users of the road.

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

The purpose of the project is to not only preserve public safety and welfare, but to improve it. A variance can be granted such that the intent of §49.20.200 is observed. Any eagles in the area are already habituated to human activity, which includes commuter, commercial and industrial vehicle traffic on Egan Drive. There would be no direct interference to eagle nests or birds as a result of the project. DOT&PF would adhere to all conditions imposed by USFWS as the federal permitting agency for bald eagle disturbance.

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

A variance that would allow the project to proceed would not cause injuring to nearby properties because all work would be completed within the DOT&PF ROW.

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

All project activities would be performed within the scope of normal road maintenance and construction standards.

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

(A) *Unreasonably prevent the owner from using the property for a permissible principal use;*
Unreasonably prevent DOT&PF from providing a safe and efficient roadway.

(B) *Unreasonably prevent the owner from using the property in a manner which is consistent as to scale, amenities, appearance or features, with existing development in the neighborhood of the subject property;*
Unreasonably prevent DOT&PF from maintaining safe public access on Egan Drive.

(C) *Be unnecessarily burdensome because unique physical features of the property render compliance with the standards unreasonably expensive; or*
Not applicable.

(D) *Because of preexisting nonconforming conditions on the subject parcel, the grant of the variance would not result in a net decrease in overall compliance with the land use code, title 49, or the building code, title 19, or both; and*
Preexisting conditions include the presence of an eagle nest within 330 feet of Egan Drive. The activities proposed by this project either conform with or do not affect Land Use Code, Title 49, or Building Code 19.

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

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PERMIT

Attachment B

Variance Approval Criteria

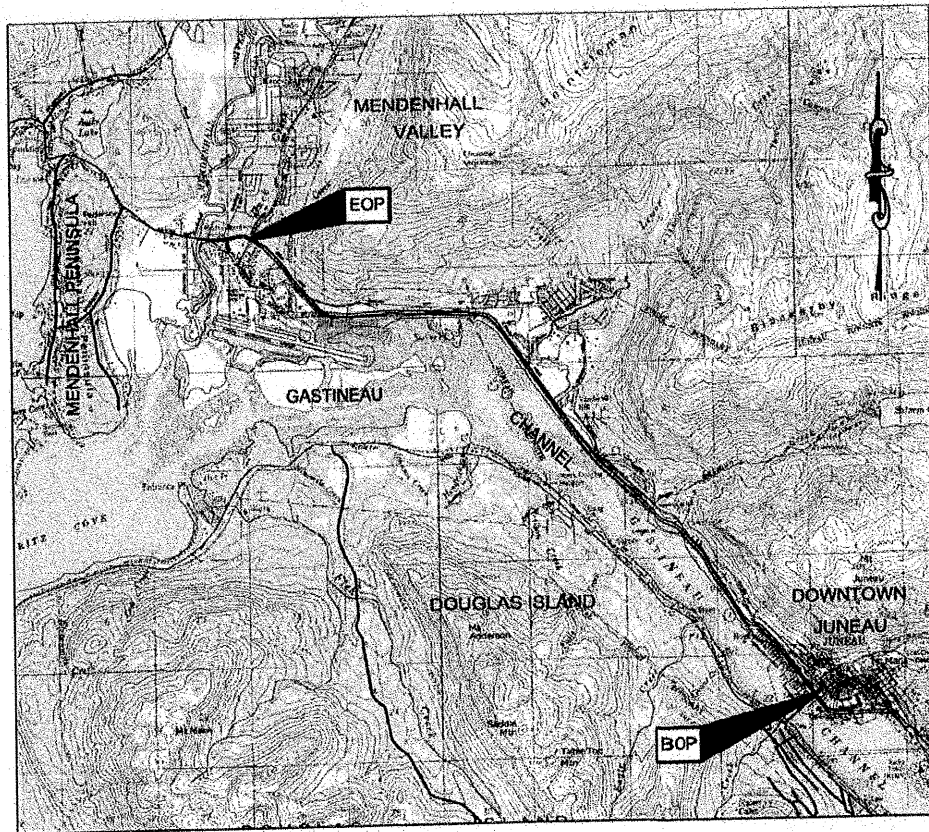
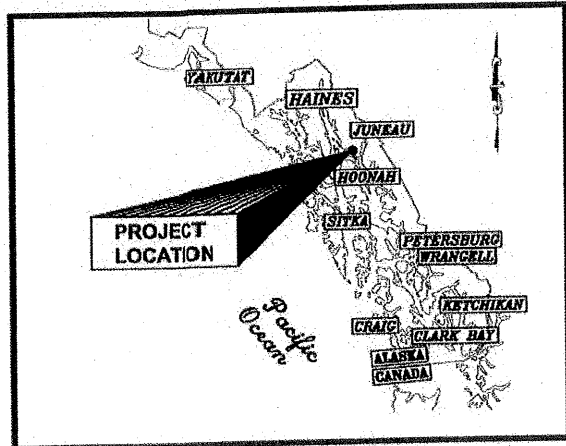
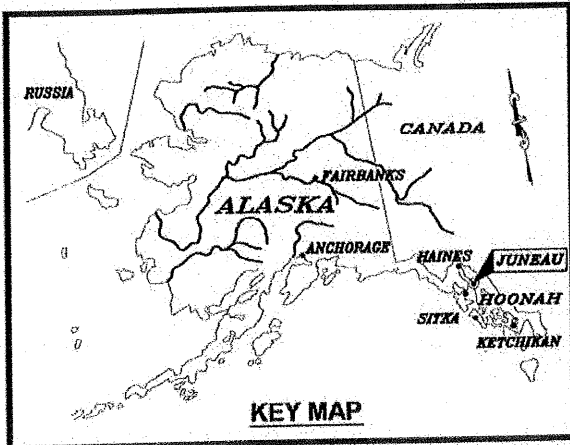
By granting the variance, Juneau residents and visitors would have the benefit of smoother and safer travel on Egan Drive as a result of resurfacing, new signage, road lines, and guardrail, as well as the benefit of improved pedestrian facilities at intersections that would be compliant with the Americans with Disabilities Act (ADA).

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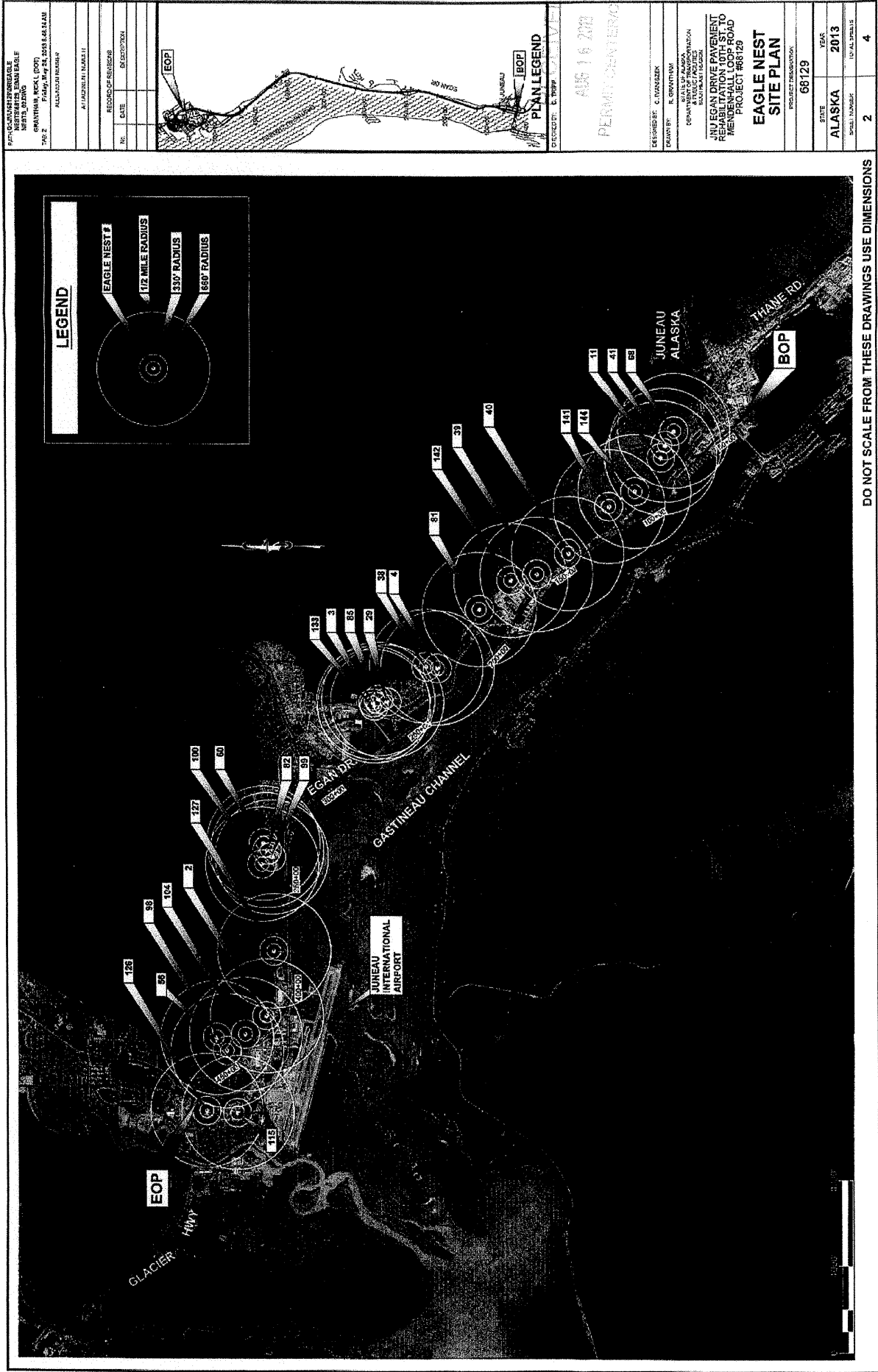
KEY AND REGIONAL MAPS

ALASKA STATE DEPT. OF TRANSPORTATION
AND PUBLIC FACILITIES
SOUTHEAST REGION

EGAN DRIVE: PAVEMENT REHAB FROM
10TH ST. TO MENDENHALL LOOP RD.

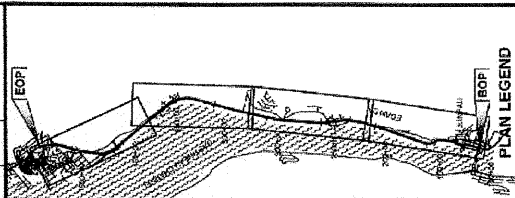
AT: JUNEAU, ALASKA

DATE: MARCH 2013 SHEET 1 OF 4



EAGLE NEST PROJECT
 GASTINEAU CHANNEL
 EAGLE NESTS, BOWLING
 OPERATIONS, BOWLING, BOWLING
 NUMBER: 2013-001-001-001-001-001

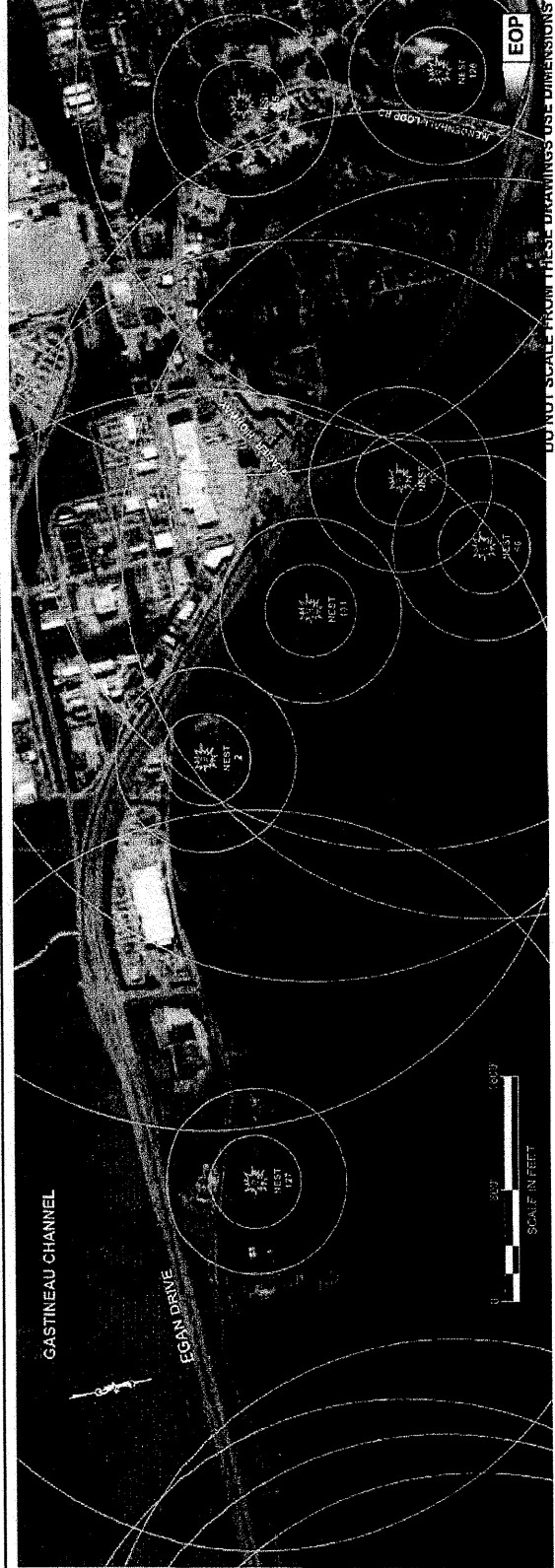
ATTACHMENT NUMBER	
NO.	DATE



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 AUG 16 2013
 TERRA CENTER/CED

DESIGNER: C. HANDEK
 DRAWN BY: IL. KURTILAK
 DEPARTMENT OF PUBLIC WORKS
 DIVISION OF PUBLIC UTILITIES
 1000 EAST 10TH AVENUE
 ANCHORAGE, ALASKA 99501

PROJECT INFORMATION	
PROJECT NUMBER	68129
STATE	ALASKA
YEAR	2013
SHEET NUMBER	4
TOTAL SHEETS	4



DO NOT SCALE FROM THESE DRAWINGS USE DIMENSIONS

Attachment D

Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
 State #68129/Federal # NH-0932(049)

Table 1. Eagle nests near proposed project activities.

Nest number	Location	Activity within 330' radius	Activity between 330' to 660' radius	Activity between 660' to ½ mile radius
40	58.323°N 134.455°W	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
39	58.327°N 134.460°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
99	58.361°N 134.528°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
127	58.361°N 134.552°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
2	58.361°N 134.567°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
104*	58.364°N 134.571°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
98	58.366°N 134.575°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
126	58.369°N 134.591°W	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment 	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
11	58.311°N 134.432°W	--	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
41	58.310°N 134.429°W	--	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail
68	58.309°N 134.426°W	--	--	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail

Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
 State #68129/Federal # NH-0932(049)

Nest number	Location	Activity within 330' radius	Activity between 330' to 660' radius	Activity between 660' to ½ mile radius
144	58.314 ⁰ N 134.441 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
<i>141</i>	58.317 ⁰ N 134.444 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
142	58.330 ⁰ N 134.462 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
81	58.334 ⁰ N 134.468 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
4	58.339 ⁰ N 134.482 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
38	58.341 ⁰ N 134.482 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
29	58.346 ⁰ N 134.491 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
85	58.347 ⁰ N 134.490 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
3*	58.348 ⁰ N 134.491 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
133	58.347 ⁰ N 134.492 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
60	58.362 ⁰ N 134.525 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
82	58.361 ⁰ N 134.526 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
100	58.362 ⁰ N 134.530 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
56	58.368 ⁰ N 134.571 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail
115	58.365 ⁰ N 134.590 ⁰ W	--	--	<ul style="list-style-type: none"> Mechanized post driving to install guardrail

127 Bold Nest Number = Active Nest

*active nest with incubating adult

141 Italicized Nest Number = Inactive Nest

40 Normal Text = Previously identified nest not located May 24, 2013

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Attachment E



Federal Fish and Wildlife Permit Application Form

Click here for addresses.

Return to: U.S. Fish and Wildlife Service (USFWS)

Region 7 - Alaska
1011 E. Tudor Road
Anchorage, AK 99503

Type of Activity: Eagle Take to Protect an Interest in a Particular Locality

New Application
 Requesting Renewal or Amendment of Permit # _____

Complete Sections A or B, and C, D, and E of this application. U.S. address may be required in Section C, see instructions for details.
See attached instruction pages for information on how to make your application complete and help avoid unnecessary delays.

A. Complete if applying as an individual			
1.a. Last name	1.b. First name	1.c. Middle name or initial	1.d. Suffix
2. Date of birth (mm/dd/yyyy)	3. Social Security No.	4. Occupation	5. Affiliation/ Doing business as (see instructions)
6.a. Telephone number	6.b. Alternate telephone number	6.c. Fax number	6.d. E-mail address

B. Complete if applying on behalf of a business, corporation, public agency, tribe, or institution			
1.a. Name of business, agency, tribe, or institution Alaska Department of Transportation & Public Facilities		1.b. Doing business as (dba)	
2. Tax identification no.		3. Description of business, agency, or institution state agency responsible for transportation infrastructure	
4.a. Principal officer Last name Clough	4.b. Principal officer First name Al	4.c. Principal officer Middle name/ initial	4.d. Suffix
5. Principal officer title Southeast Regional Director		6. Primary contact Jane Gendron	
7.a. Business telephone number 907-465-4499	7.b. Alternate telephone number	7.c. Business fax number 907-465-3506	7.d. Business e-mail address jane.gendron@alaska.gov

C. All applicants complete address information				
1.a. Physical address (Street address; Apartment #, Suite #, or Room #; no P.O. Boxes) 6808 Glacier Highway				
1.b. City Juneau	1.e. State Alaska	1.d. Zip code/Postal code: 99801	1.c. County/Province	1.f. Country USA
2.a. Mailing Address (include if different than physical address; include name of contact person if applicable) PO Box 112506				
2.b. City Juneau	2.e. State Alaska	2.d. Zip code/Postal code: 99811	2.c. County/Province	2.f. Country USA

D. All applicants MUST complete	
1. Attach check or money order payable to the U.S. FISH AND WILDLIFE SERVICE in the amount \$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 those acting on behalf of such agencies, are exempt from the processing fee -- attach documentation of fee exempt status as outlined in instructions. (50 CFR 13.11(d))	
2. Do you currently have or have you ever had any Federal Fish and Wildlife permits? several No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> If yes, list the number of the most current permit you have held or that you are applying to renew/re-issue: _____	
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, and 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 photocopied or stamped signatures) Date of signature (mm/dd/yyyy) <i>[Signature]</i> 7/3/2013	

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Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th Street to Mendenhall Loop Road
State #68129/Federal # NH-0932(049)

1. (A) A detailed description of the activity that will likely cause the disturbance or other take of eagles;

DOT&PF would resurface Egan Drive with new pavement from 10th Street in downtown Juneau north to Mendenhall Loop Road in the Mendenhall Valley, a distance of about 8.1 miles (Sheets 1 and 2). All project activities would take place within the existing DOT&PF right-of-way. In addition to repaving, DOT&PF would

- replace guardrail
- stripe the new surface
- repair the road base in some locations
- insert liners in deteriorated culverts
- improve pedestrian facilities to meet Americans with Disabilities (ADA) standards

ADA improvements consist of

- relocating crossing signal activation buttons
- widening select sidewalks to provide adequate width around utility poles
- removing and resurfacing portions of pedestrian islands to create at-grade crossings
- constructing curb ramps with detectable warning strips

Activities with potential to cause disturbances to eagles would occur along the entire project corridor and include noise associated with:

- guardrail installation with a mechanized post driver
- grind and pave equipment

Eagle Information

DOT&PF staff reviewed USFWS documented nest locations and conducted an aerial nest survey of the project area on May 24, 2013. Previously identified nests were located and observed to determine whether the nest was active in the 2013 breeding season. The area was also searched for new nests that had not been previously identified. Nests were recorded as active if adults were observed incubating at the nest, or were perched on or near the nest tree regardless of nest contents. Sheets 2 to 4 show all previously identified nests within ½ mile of the proposed project activities. Active nests that were located May 24, 2013 are indicated in the table below by bold text (127) and an asterix [*] indicates incubation observed. Inactive nests located May 24, 2013 are indicated in the table below by italicized text (141). Normal text indicates all other previously identified nests that were not located May 24, 2013.

Twenty-six bald eagle nests are documented within ½ mile of proposed project activities that have potential to disturb eagles; one is within 330 feet and another seven are within 660 feet of the edge of pavement (Sheets 3 and 4).

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Attachment F

Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
 State #68129/Federal # NH-0932(049)

In addition to nests near the proposed project, bald eagles forage and congregate in the areas presented in Table 2 and shown on Sheet 2. Eagles forage and congregate directly adjacent to Egan Drive in the Mendenhall Wetlands State Game Refuge in all seasons, with higher concentrations observed in summer and fall than in winter, especially at the mouths of anadromous streams. Eagles also forage and congregate on the landward side of Egan Drive in the vicinity of the landfill, Lemon Creek, and its associated wetlands.

Table 2. Eagle use areas.

Area	Activity within 330' radius (and greater)
Mendenhall Wetlands State Game Refuge	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment
Lemon Creek, wetlands and landfill	<ul style="list-style-type: none"> • Mechanized post driving to install guardrail • grind and pave equipment

1. (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);*

The species likely to be “taken” are bald eagles (*Haliaeetus leucocephalu*). The most likely form of take is disturbance; however, the eagles that nest, forage, and congregate in and near the project area do so in close proximity to human activity (see 1. (D-3)). As a result, the eagles are likely habituated to the noise associated with daily highway and air traffic, including heavy equipment operation at commercial and industrial sites. For this reason and the measures proposed in 1. (H), we do not expect to take or disturb any eagles.

1. (C) *Maps and digital photographs that depict the locations of the proposed activity, including the area where eagles are likely to be taken;*

The eagle nest and eagle use locations are shown on Sheets 2 - 4. The locations and radii relative to the proposed construction are also shown on these figures, as well as in the tables above.

1. (D) *For activities that are likely to disturb eagles (versus other take):*

1. (D-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);*

Tables 1 and 2 above provide the coordinates of the eagle use areas and the distances between these areas and the project activities. Sheet 2 shows an aerial photo of the project vicinity. Nest 40 is located within 330 feet of the edge of pavement on Egan Drive (Sheet 3). Seven other nests are located between 330 and 660 feet from the edge of pavement. Another 18 are located within ½ mile of Egan Drive.

Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
State #68129/Federal # NH-0932(049)

1. (D-2) *Whether or not the eagle use area is visible from the activity area, or if screening vegetation or topography blocks the view;*

Most of the documented nests are located on forested hillsides above the project area and, because of a vegetated buffer, are not visible from the proposed activity area. This includes Nest 40, which is within 330 feet of the edge of Egan Drive pavement (Sheet 3). Two nests (115 and 126) near the intersection of Mendenhall Loop Road with Egan Drive are also buffered from the project activities by trees. Eagle foraging and congregation areas along the Mendenhall Wetlands, Lemon Creek and its wetlands, or the landfill are visible from the proposed activity area.

1. (D-3) *The nature and extent of existing activities in the vicinity similar in nature, size and use to that being proposed, and the distance between those activities and the important eagle use area(s);*

Bald eagles that nest, forage, and congregate in the locations described above do so in close proximity to existing human activity. As a result, the eagles are habituated to daily noise generated by vehicle traffic and heavy equipment operation. Human activities include residential uses; commuting traffic; commercial and industrial activities around the Channel Drive/Glacier Highway (Salmon Creek) intersection, in Lemon Creek (landfill, gravel mining, and concrete batch plant), near the Glacier Highway (Nugget) intersection, and Mendenhall Loop intersection; as well as fixed wing aircraft and helicopters approaching and departing the Juneau International Airport (Sheet 2).

1. (E) *The date the activity will start and is projected to end;*

DOT&PF anticipates construction would start in spring 2014 and continue through the end of 2014.

1. (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;*

The purpose of this project is to improve transportation safety and ride quality along Egan Drive, and to bring pedestrian facilities at intersections into compliance with the Americans with Disabilities Act. All motorized users of Egan Drive, as well as pedestrians and disabled users are anticipated to benefit from improved safety.

1. (G) *An explanation of why avoiding the take is not practicable, or for programmatic take, why it is unavoidable; and*

The possibility of eagle disturbances is unavoidable due to the proximity of the nests to the project location. It is not possible to construct outside of the sensitive nest selection/breeding/fledging season due to the need for relatively warm, dry weather to complete the resurfacing activity, and the limited probability of warm, dry weather in Juneau either before or after the sensitive nesting period. This limitation is reflected in DOT&PF Construction Requirements for Southeast Region which requires paving to occur between May 15 and September 15, and prohibits paving unless the temperature of the road surface is 40° F and rising.

Application for Eagle Non-Purposeful Take Permit
Egan Drive Pavement Rehabilitation 10th St to Mendenhall Loop Rd
State #68129/Federal # NH-0932(049)

1. (H) *A description of measures proposed to offset the detrimental impact of the proposed activity on the regional eagle population.*

Existing vegetation buffers will be maintained. The contractor will be required to have standard mufflers on all construction vehicles to minimize noise from machinery.

2. Records relating to activities conducted under permit will be kept at ADOT&PF Southeast Region, 6860 Glacier Highway, Juneau, Alaska 99811
3. Section 401 Water Quality Certification, Alaska Department of Environmental Conservation; federal permits include Department of Army Section 404/10 authorization.